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ABSENTEE.

1. The duties of an attorney *ad hoc* for an absentee do not terminate with the conclusion of the suit in the lower court: it is incumbent upon him to appeal, if, in his opinion, his client will be benefited thereby.
Bach v. *Ballard*, 487.

2. The appeal bond is properly signed by the attorney *ad hoc* in behalf of his client. *Ibid.*

ACCOUNT.

1. An account cannot be considered an "open account," and as such prescribed by three years, under section 2 of the Act of March 5th, 1852, where it was signed and rendered by the debtor, with a statement in detail of its debtor and creditor items. *Dixon* v. *Lyons*, 160.

See USURY—*Wright* v. *Hill*, 233.

ACTION.

1. The Article 1965 of the Civil Code, which provides that the action to annul a contract made in fraud of the rights of creditors, is to be exercised by the representative of the creditors when there has been a cession of property, is no longer in force, having been changed by the Act of the Legislature of 1855, (Revised Statutes, pp. 256, 257,) which authorizes, in express terms, the institution of such a suit by an individual creditor *after* the cession of property. *Giraud* v. *Mazier*, 147.

2. An action to annul a sale of negroes alleged to have been bought at a succession sale by the administrator through persons interposed, was properly brought against the administrator at his domicil in regard to nullities arising subsequent to the order of sale. The order of sale itself and the proceedings anterior to it could only be attacked in the court which decreed the sale. *Woods* v. *Woods*, 189.

3. The heirs have such an interest in the succession while under administration as to authorize their bringing a suit against the administrator to set aside a sale made to himself through persons interposed. *Ibid.*

4. A party who is sued in the United States Court in a petitory action, cannot by an action of jactitation, compel his adversary to come into a State court of concurrent jurisdiction to try the question of title.
Van Wych v. *Gaines*, 235.

5. In a petitory action proof of adverse possession is a necessary part of plaintiffs' case, because the petitory action can only be maintained against a party in possession. *Girard's Heirs* v. *New Orleans*, 295.

ACTION (*Continued*).

6. An admission of plaintiffs' title, is not sufficient ground upon which to base a judgment against the defendant. *Ibid.*

7. An action for damages incident to the action of warranty for *eviction* under Art. 2482 of the Code cannot be maintained where no actual eviction occurred, in consequence of a compromise made by the warrantor with the plaintiff before judgment was rendered. *Laborde* v. *New Orleans*, 326.

8. In the present legislation of the State an action by a slave for freedom cannot be maintained. *Lusk* v. *Church*, 360.

9. To sustain a possessory action, it is incumbent upon the plaintiff to prove that he had the real and actual possession of the property at the instant when the disturbance occurred, and that he has suffered a real disturbance either in fact or in law, within a year before the suit was brought. *Millard* v. *Richard*, 572.

10. The rules of proceeding contained in the Civil Code in regard to the hypothecary action, after its commencement, were repealed by the Act of the Legislature, 25th of March, 1828, which provides: "That all rules of proceeding which existed in this State before the promulgation of the Code of Practice, except those relative to juries, recusation of Judges and other officers, and of witnesses, and the competency of the latter, are hereby abrogated. *Lewis* v. *Labauve*, 382.

11. Where the law gives a delay within which a thing may be done, the right to do the thing exists so long as no act of the court or of the opposite party has intervened to conclude that right. *Ibid.*

12. A third possessor, who is not personally liable for the debt, may, for good cause, enjoin the execution of the order of seizure even after the delay of ten days, mentioned in Article 3366 of the Civil Code. *Ibid.*

See WILLS—*Clark* v. *Gaines*, 138.
See PRESCRIPTION—*Barrow* v. *Shields*, 57.
Derance v. *Montgomery*, 513.
See SALE—*Knox* v. *Payne*, 361.
See SUCCESSION—*Succession of Pargoud*, 367.
See JUDGMENT—*Tutorship of Hughes*, 380.
See MINORS—*Wilson* v. *Porter*, 407.
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See BILLS AND NOTES—*Powell* v. *Lawhead*, 627.
See ATTACHMENT—*Dalson* v. *Brown*, 551.

ACTS OF CONGRESS.

1. The Act of Congress admitting Louisiana into the Union, which provides that it shall be a condition upon which said State is admitted into the Union, that the river Mississippi and the navigable rivers and waters leading into the same and into the Gulf of Mexico shall be common highways, and open to the inhabitants of the States and Territories of the Union, was not intended to apply to streams only capable of an imperfect navigation in time of floods and very high water. *Boykin* v. *Shaffer*, 129.

2. The right to charge toll for the use of a lock on a water course is a franchise which the sovereign alone can confer. *Ibid.*

See PUBLIC LANDS—*Stanbrough* v. *Wilson*, 494.

ADOPTION.

1. An Act of the Legislature, authorizing the adoption of an orphan child, with the *proviso* that the adoption be executed by act signed before a Notary Public, within a fixed period after the passage of the law, must be interpreted as conferring on the adopted child all the rights of a legitimate child. An orphan so adopted will inherit the estate of those making the adoption, to the exclusion of all collateral heirs.

Vidal v. *Commagère*, 516.

ADVANCES.

By Factors—

See PRIVILEGES—*Shaw* v. *Grant*, 52.

AGENT.

See PRINCIPAL AND AGENT.

ALIMONY.

1. *Ex parte* orders for the allowance of alimony cannot bind the opposite party, except they may furnish one of the items of proof, to justify a third person in demanding from the husband, payment for the necessary supplies furnished the wife during the pendency of the suit.

Fletcher v. *Henley*, 150.

APPEAL.

1. An appeal taken on behalf of the State by an officer unauthorized to prosecute such appeal, which is, therefore, dismissed, does not bar a subsequent appeal from the same judgment, by an assignee of the State whose interests have been affected by the judgment. *Succession of Fletcher*, 29.

2. Where the Clerk has omitted to issue a citation of appeal in conformity to the order granting the appeal, the error is not attributable to the appellant; the appeal will not be dismissed on such ground, but time allowed to correct the error. *Surgi* v. *New Orleans*, 32.

3. Where, in an action for divorce, an *ex parte* order had been made, allowing the wife $75 per month for her support, and on a rule to show cause why execution should not issue, the execution was ordered for a less sum than $300—*Held:* That an appeal did not lie from such order.

Fletcher v. *Henley*, 150.

4. The statute of April 30, 1853, requiring that appeals in cases in which the right to office is involved should be made returnable in ten days after judgment of the District Court, does not apply to the case of a contested election. *Lanier* v. *Gallatas*, 175.

5. In contested election cases the appeal must be made returnable as in other civil cases from the same parish or district, and will have precedence in the Supreme Court only over all other cases from the same district or body of parishes, having the same time assigned by law for the trial of their appeals. *Ibid.*

6. Where evidence was offered in the court below, but rejected, to show that the value of the office in dispute was over $300, *Held:* That the evidence should have been received, and that the case is appealable. *Ibid.*

APPEAL (*Continued*).

7. An appeal will not be granted to a third person not party to the suit, who claims a superior privilege on a fund ordered by the judgment to be distributed, where it is apparent that new evidence would be necessary to establish, that the judgment appealed from was erroneous.
State v. *Judge 2d District Court*, 199.

8. When an appeal bond for a devolutive appeal was given in favor of the administratrix, but not in favor of the creditors of the succession whose claims were opposed by the appellant, the appeal was dismissed.
Succession of McCrindell, 231.

9. The neglect of the Clerk to issue or the Sheriff to serve the citation of appeal, is not an irregularity imputable to the appellant, who, in such case, will be allowed further time to cite the appellee.
Lewis v. *Hennen*, 259.

10. An appeal to the Supreme Court cannot be taken from a peremptory *mandamus*, issued by a District Court of the city to compel the Recorder to allow an appeal to such District Court from a sentence of the Recorder imposing a fine of less than $300. *State* v. *Fabre*, 279.

11. If the transcript of appeal be imperfect from omissions of the Clerk whose certificate is full, it is the duty of the appellees to have the correction made by a *certiorari*, otherwise the appellate court will act upon it as a complete record and reverse the judgment of the court below, if it does not appear to be justified by the documents and evidence contained in the transcript.
State v. *Wilson*, 288.

12. Where one alone of several defendants appeals from the judgment in favor of the plaintiff, the appeal will be dismissed, unless the appellant makes his co-defendants, who were necessary parties in the court below, parties to the appeal. *Folger* v. *Rouanet*, 296.

13. An interlocutory order transferring a cause to another court does not occasion irreparable injury, although it may occasion delay: and an appeal will not lie from such order. *Pooley* v. *Moorhouse*, 300.

14. An action by the master to procure the emancipation of his slave, under the Act of the Legislature of 15th March, 1855, (since repealed,) held to be appealable. *Jones* v. *State*, 406.

15. Where the condition of the appeal bond for a devolutive appeal, is only for payment of the costs of the appeal, the appeal will be dismissed.
Jordan v. *Saunders*, 417.

16. The defect in the original bond cannot be cured by the substitution of another bond, after motion made to dismiss the appeal. *Ibid.*

17. An appeal will be dismissed if all the parties interested in maintaining the judgment of the court below are not mentioned in the appeal bond.
Dow v. *Hardy*, 441.

18. After an appeal has been applied for and obtained, it is too late to ask for a statement of facts. *State* v. *Judge 2d District Court*, 485.

19. In the proceeding of garnishment the real demand in contestation is the claim of the plaintiff against the debtor and garnishee. And, on appeal, if that demand is under three hundred dollars, the appeal will be dismissed.
Gustine v. *New Orleans Oil Factory*, 510.

APPEAL (*Continued*).

20. Where the judgment of the lower court amended the tableau of distribution, and charged the administrator with sums of money so as to give an additional amount to each of the heirs, and the administrator appealed, making only those heirs who had called on him to render his account parties to the appeal—*Held*: That the appeal should be dismissed, as all the heirs should have been made parties to it, being interested in maintaining the judgment appealed from. *Broussard* v. *Robin*, 560.

21. If the order granting an appeal does not mention the return day, and the appeal is filed after the next return day had passed, the appeal will be dismissed. *Déjean* v. *Stilly*, 565.

22. An interlocutory judgment setting aside a writ of sequestration, is one calculated to work an irreparable injury, and consequently may be appealed from. *Johnson* v. *Johnson*, 581.

23. Though the amount in dispute between the original parties to a suit commenced by attachment be under three hundred dollars, yet if a third party intervenes and claims the property attached, which exceeds that amount in value, such intervention vests the Supreme Court with jurisdiction, and the case may be appealed. *Curtis* v. *Blacketer*, 592.

24. Where the appellee has not been cited, and the fault is not imputable to the appellant, further time for service of the citation of appeal will be granted under the Act of the 20th of March, 1839. *Marshall* v. *Watrigant*, 619.

25. Where a suit was brought by a slave, who caused herself to be sequestered, and when an appeal was taken from a judgment rendered in her favor, she could not be found to be served with the citation of appeal—*Held:* That service of the citation upon her counsel must be considered as good as if she had departed from the State. *Ibid.*

See PUBLIC LANDS—*Kellar* v. *Leflin*, 185.
See SUPREME COURT—*Long* v. *Barnes*, 392.
See DAMAGES—*Long* v. *Robinson*, 465.
See HUSBAND AND WIFE—*Holmes* v. *Barbin*, 474.
See ABSENTEE—*Back* v. *Ballard*, 487.
See CRIMINAL LAW—*State* v. *Henderson*, 489.

ARBITRATION AND AWARD.

1. The homologotion of the umpire's report, contradictorily with the parties in interest, is final as to the special matter embraced in it; and they cannot be mooted again before the same court when the cause comes on to be heard on its merits. *Betterton* v. *Adams*, 334.

2. An award cannot be enforced when it appears that the arbitrators who rendered it were not sworn. *Overton* v. *Alpha*, 558.

ATTACHMENT.

1. In the assessment of damages in a suit upon an attachment bond, the rule is that the plaintiff shall recover the damages actually sustained and no more: unless in a case where the attachment was utterly unfounded and malicious. *Moore* v. *Withenburg*, 22.

ATTACHMENT (*Continued*).

2. Property which is under seizure by the United States Marshal is beyond the reach of the State process so long as the Marshal's possession lasts, and an attachment from a State court is inoperative on property so situated. *Ibid.*

3. Where an attachment has wrongfully issued, the party whose property was improperly attached is entitled to recover the amount of Attorney's fees, which he has paid to have the attachment dissolved, and all other actual damages which he may prove. *Phelps* v. *Coggeshall*, 440.

4. In an attachment suit the affidavit is not *per se* proof of permanent departure. *Gordon* v. *Baillio*, 473.

5. It is not a sufficient reason to justify a writ of attachment, that the debtor, who happens to be absent, has no other property but that which is attached. *Ibid.*

6. The process of attachment is a harsh remedy, and parties resorting to it are held to a strict compliance with the provisions of the law authorizing it. *Price* v. *Merritt*, 526.

7. Merchants whose acceptances are unmatured, and unpaid, and outstanding in the hands of third parties, are not creditors within the meaning of the term which authorizes a proceeding by attachment, nor will the insolvency of the party for whom they have accepted make them such. *Ibid.*

8. The creditors of a consignor cannot attach merchandize, or its proceeds, in the hands of the consignee, when the consignments are made with express instructions, that the proceeds of the sale are to be paid to a third party who accepts this stipulation made in his favor; nor can they attach when the consignor, having made the consignments without instructions, subsequently orders the proceeds to be paid to a third party, and the consignee promises to pay in pursuance of the order. *Dolsen* v. *Brown*, 551.

9. When the consignments are made without instructions, and a draft is drawn subsequently by the consignor in favor of a third party, upon the consignee and against the consignments—*Held:* That an expression of mere willingness, on the part of the consignee, to pay the amount of the draft out of the proceeds of the consignments, coupled with a refusal to accept the draft, is insufficient to give to the holders of the draft a right of action, or to create a legal tie, the essence of a perfect obligation. *Ibid.*

See DAMAGES—*Transit Co.* v. *McCerren*, 214.
See PARTNERSHIP—*Thomas* v. *Lusk*, 277.
See CASES AFFIRMED, OVERRULED, &c.—*Wesson* v. *Marshall*, 436.
See PRINCIPAL AND SURETY—*Love* v. *Voorhies*, 549.
See APPEAL—*Curtis* v. *Blacketer*, 592.

ATTORNEY-AT-LAW.

1. When a bill of particulars is called for in a suit by an attorney at law for services rendered, it need not specify the charge for each item of service, and it is no objection to it that it makes an aggregate claim larger than that claimed in the petition. The object of the bill of particulars is to show the nature and extent of the services, to enable the court to judge of their value in the aggregate, and no greater amount could be allowed than that claimed in the petition. *Shaffer* v. *Cross*, 110.

AUCTIONEERS.

1. Under the Act of 1848, relative to Auctioneers (Sess. Acts, p. 96), the citizen who is desirous of doing an auction business, must execute and deliver to the Recorder of the parish (to the Recorder of Mortgages in New Orleans) his bond, with security, *previous to entering upon the transaction of such business.* *St. Louis Church* v. *Bonneval*, 321.

2. But the application by the Auctioneer for a license, to the Auditor, although it be commanded, yet it is not made a condition precedent to the exercise of the business of auctioneer. *Ibid.*

3. The obligation of the sureties upon the bond commences from the recording of the bond in the mortgage office. *Ibid.*

4. Parties who put their property into the hands of auctioneers for sale, have only to address themselves to the office of the Recorder of Mortgages of the parish, for the purpose of ascertaining whether an auctioneer's bond is recorded. *Ibid.*

See TAXES—*New Orleans* v. *Turpin*, 56.

BANKS.

1. A stockholder in a corporation has a right of access to the proper sources of knowledge to know how the affairs of the corporation are conducted. If his rights are not restricted, in that respect, by their charter or rules and by-laws passed in conformity thereto, a stockholder in a Banking Company has a right to the inspection of the "discount book" of the bank, within proper and reasonable hours. If the right is denied a *mandamus* is the proper remedy. *Cockburn* v. *Union Bank*, 289.

BATTURE.

1. The alluvion belongs to the owner of the soil situated on the edge of the water, whether it be a river or a creek, and whether the same be navigable or not, who is bound to leave public that portion of the bank which is required by law for the public use. C. C. 501.
Barrett v. *New Orleans*, 105.

See CASES AFFIRMED, OVERRULED, &c.—*Barrett* v. *New Orleans*, 105.
See NEW ORLEANS—*Yeatman & Co.* v. *New Orleans*, 154.
Sarpy v. *New Orleans*, 349.

BILL OF EXCEPTIONS.

See MANDAMUS—*State* v. *Judge*, 484.
See SUPREME COURT—*Hale* v. *New Orleans*, 499.

BILLS AND NOTES.

1. The defendant being sued on his note payable to plaintiff's order, set up as a defence that he had sold to the plaintiff, by notarial act, the stock in trade, &c., of a coffee house, the price of which was composed in part of the note sued on. The notarial act of sale contained an acknowledgment that the price was paid in "current money." It was *held:* That as the plaintiff had held the note at the time of the sale, and after the sale had continued to hold it, without making any demand of payment until it was nearly prescribed, parol evidence should be let in to establish that the note sued on formed part of the price of the sale. *Saramia* v. *Courrégé*, 25.

BILLS AND NOTES (*Continued*).

2. The rule maintained by the older decisions in Louisiana, that a special endorsement invested the title to a note in the endorsee, who alone could sue on it, was always subject to exception, where it appeared that the endorsee had been merely the agent of the party in whose name the suit was instituted. *Wood* v. *Tyson*, 104.

3. An order of seizure and sale was properly granted to the mortgagee, on the notes of the defendant, payable to his own order, although there was a special endorsement on the back of the notes to a third party. *Ibid.*

4. Where one not a party to a note pays it for the honor of the maker, the law implies an obligation on the part of the maker to reimburse him. *Leake* v. *Burgess*, 156.

5. *S. R.* sued as payee upon a note made payable to *S. R. & Co.*, alleging that he had traded alone under that style and firm; defendant excepted, on the grounds, that he had traded with *S. R. & Co.*, and denied that plaintiff owned the note, or traded, as alleged, under the name and style of *S. R. & Co.*—*Held:* That plaintiff, to recover as payee, should prove that he alone composed the nominal firm of *S. R. & Co.*, to whom the note was made payable. *Robb* v. *Bailey*, 457.

6. A drawer of a bill of exchange is entitled to notice of protest for non-payment, where it appears that such bill was not given for his accommodation, but that of the acceptors, who had specially contracted that the bill should be paid at maturity. *Bank of Louisiana* v. *Morgan*, 598.

7. The fact that the bill was payable by the acceptors, at a particular place, did not dispense the holder, who wished to fix a liability upon the drawer, from the duty of notifying him of the protest for non-payment. *Ibid.*

8. An action is maintainable upon the allegation that the defendant, without funds in the hands of the plaintiffs, drew their bill, which the plaintiffs accepted and paid for the accommodation and benefit of the drawer. *Powell* v. *Lawhead*, 627.

See EXECUTORY PROCESS—*Catalogne* v. *Alva*, 98.
See MORTGAGE—*Brown* v. *Sadler*, 205.
See PARTNERSHIP—*Speake* v. *Barrett*, 479.
See HUSBAND AND WIFE—*Wright* v. *Bailey*, 536.
Laplante v. *Briant*, 566.
See COMMUNITY—*Graham* v. *Egan*, 546.
See CORPORATIONS—*East Pascagoula Hotel Company* v. *West*, 545.
See PRESCRIPTION—*Elliott* v. *Brown*, 579.

BONDS.

1. As between the principal in a sequestration bond and the party whose property has been sequestered, the obligation may be enforced beyond the penalty expressed in the instrument. *Biggs* v. *D'Aquin*, 21.

2. When the bond is set forth in the plaintiff's petition, the action for damages will be considered as one *ex contractu* and not barred by the prescription of one year, although damages are demanded in the petition to a larger amount than the penalty expressed in the bond. *Ibid.*

3. Objections which relate to the mode of taking a bail bond in a criminal case, and to the description of the defence, are matters of defence which,

BONDS (*Continued*).

if not made available when the motion for the forfeiture of the bond was made, or on appeal, or on application to set aside the judgment of forfeiture, do not form legal grounds for an injunction.

Sartorius v. *Dawson*, 111.

4. It is no objection to a judgment of forfeiture of the bond, that it was rendered on the last day of the term, and without previous notice to the surety. The State has the right to have the bond forfeited on any but the first day of the term. *Ibid.*

5. The surety upon an appearance bond in a criminal case is not entitled to citation or service of a rule before the bond can be forfeited.

State v. *Brown*, 266.

6. The judgment of forfeiture may be set aside upon the appearance, trial and acquittal, or upon the appearance, trial, conviction and punishment of the accused, at any time during the same term of the court for all the parishes, except the parish of Orleans, and for the parish of Orleans at any time within ten judicial days after the notice of the judgment to the parties. *Ibid.*

7. When after the forfeiture of an appearance bond and an appeal from the judgment of forfeiture, it appeared by a supplemental record that the accused had been tried, convicted and sentenced under the charge for which he gave the bond to appear—*Held:* That the appellate court was without original jurisdiction to try the question whether satisfaction of the bond should be entered on account of such new facts. *State* v. *Schmidt*, 267.

8. A mere surrender, or a new arrest of the prisoner at a time subsequent to that when the bond was forfeited, does not satisfy the judgment. *Ibid.*

9. When a court orders a bond to be taken for the appearance of a party accused of crime, it is no objection to the bond that it was taken by a person not duly authorized by the court (in the order) to take the bond—when it appears that it was taken by the Sheriff or his deputies.

State v. *Ansley*, 298.

10. When a party enters into the obligation of suretyship for the appearance of a person charged with crime, he incurs a civil obligation which, like all others, is to be considered in reference to the substance of things. *Ibid.*

11. It is not an idle form; it means something. Inasmuch as the accused was in the custody of the Sheriff or his deputies, it was fairly intended that the Sheriff and his deputies (no other person mentioned) were intended as the proper persons to take the bond; and neither the accused nor his sureties who had, by their act, put this construction upon the order of the court for the bond and secured the discharge of the accused upon this construction, can be permitted to gainsay this conclusion upon which they acted. *Ibid.*

12. A blank in a bond, remaining unfilled, does not materially change the character of the bond. The accused could not fail to know that it was for his appearance at the next term of the District Court, and from day to day and term to term until the prosecution should be ended or he should be discharged. *Ibid.*

BONDS (*Continued*).

13. The technical objection, that the crime alleged in the indictment is not properly described in the bond, will not avail; for the general condition that the accused should not depart without leave of the court, having been violated, he and his sureties are equally bound. *Ibid.*

14. Under our law the addition of a seal only confirms the signature; it adds no obligatory force to the instrument, when its execution is admitted or proven. *Bell* v. *Keefe*, 524.

15. In civil cases, an instrement under seal can be executed in blank, as well as an instrument not under seal; hence a bond is not the less valid, because it was signed and sealed, before the occasion for its use actually arose. *Ibid.*

16. Where a bond, which had previously been signed in blank, was taken by the Sheriff, and an erasure appeared, and the amount was changed in the condition of the bond, which had either been filled up at the time of signing, or subsequently, by the person to whom it was intrusted, the ink with which the erasure and change in the amount was made, appearing to be the same as that used in the rest of the writing; and when also the nature of the instrument required that the condition should be filled up with the amount as changed—*Held:* That the bond was valid and binding, that the change in the amount was necessary to complete the instrument, and that the Sheriff, under such circumstances, is not responsible for any abuse of authority, in filling up the bond; but, that if there is any responsability, it rests upon the agent intrusted with that duty by the party signing in blank. *Ibid.*

17. Where the appeal bond recites the judgment, and sets forth the fact that the appellant has taken a suspensive appeal from such judgment, and a blank is left for the amount to be filled up, it will be presumed that the blank was left in order to ascertain by calculation the amount fixed by law for a suspensive appeal, and the parties signing the bond will be bound for that amount. *Stille* v. *Beauchamp*, 604.

See AUCTIONEERS—*St. Louis Church* v. *Bonneval*, 321.
See PRINCIPAL AND SURETY—*Guice* v. *Stubbs*, 442.
Wilkins v. *Bobo*, 430.
See APPEAL—*Jordan* v. *Saunders*, 417.
Succession of McCrindell, 231.

BOUNDARY.

1. In an action of boundary, where the titles of both parties are derived from the same original vendor, the calls of the titles of the parties as understood at the time they were made, and according to the usage of the country at that time, cannot be disregarded on account of more recent surveys made by the Government which would change their boundaries. *Lawrence* v. *Burris*, 611.

2. The title to public lands being in the government of the United States at the time certificates of confirmation are issued, the land department at that time is vested with the exclusive jurisdiction to settle and fix the boundaries between the claimants. *Sandoz* v. *Ozenne*, 616.

3. When the department has acted and fixed the boundaries, in the absence of fraud on the part of the party claiming under such action, or any partic-

BOUNDARY, (*Continued*).

lar equity in favor of any other party, effect must be given to the action of the department. *Ibid.*

BROKER.

1. The right of a broker to a commission upon a sale, depends entirely upon the completion of the sale, and brokerage is not due until the sale is executed. *DeSantos* v. *Taney*, 151.

CASES AFFIRMED, OVERRULED, &c.

1. The cases of *Shaw & Zunts* v. *Knox*, and *McCutcheon, Howell & Co.* v. *Wilkinson*, 12 An. pp. 41 and 483, reviewed and the principles of those cases re-affirmed. *Shaw* v. *Grant*, 52.
2. The principles of law respecting the right of batture as settled in the cases of *Kennedy* v. *Municipality No.* 2, 10 An. 54, and *Remy* v. *Municipality No.* 2, re affirmed. *Barrett* v. *New Orleans*, 105.
3. The principle laid down in the case of *Municipality No.* 1 v. *Wheeler & Blake*, 10 An. 745, that an *ex post facto* law, which has no relation to crimes and penalties, and does not impair the obligations of contracts nor tend to divest vested rights, is not unconstitutional, re-affirmed. *New Orleans* v. *Cordeviolle*, 268.
4. The decision in the case of *Amis* v. *The Bank of Louisiana*, 9 Rob. 350, re-affirmed, to the effect that a residence in the State for a sufficient time to acquire a political domicil, is not required to protect a person's property from attachment, who is an actual resident of the State. *Wesson* v. *Marshall*, 436.
5. The principle in the case of *Hollander* v. *His Creditors*, 6 An. p. 669, re-affirmed, to the effect that all the privileges created by Art. 3184 C. C. as amended by the Act of 1843, are equal in rank, except the privilege for the wages of the overseer, which is declared by the Act to be superior to that of the furnisher of supplies; this exception evidently confirms the rule. *Cory* v. *Eddins*, 443.
6. The decision in the case of the *State of Louisiana, ex rel. John Turpin*, against the same party, ante p. 481, re-affirmed. *State* v. *Judge 2d District Court*, 483.
7. The decision in the case of *Curtis* v. *Blacketer*, just decided, re-affirmed. *Danjean* v. *Blacketer*, 595.
8. The *dictum* in *Williams* v. *Close*, 12 An. 877, that the confirmation of a Spanish grant inures to the benefit of the original owner, was said *arguendo;* the decisions in *Purvis* v. *Harmanson*, 4 An. 422; *Thomas* v. *Phillips*, 7 An. 546; and *Farmer's Heirs* v. *Fletcher*, 11 An. 142, re-affirmed. *Sandoz* v. *Ozenne*, 616.

COMMON CARRIER.

1. The captain of a vessel may keep the goods unless the shipper or consignee shall give him security for the payment of the freight. C. C. 3213. But he cannot demand payment before giving the consignee an opportunity to inspect the condition of the shipment, and he is bound upon the consignee's tendering the freight money, to place the whole lot of goods comprising the shipment on the levee, separate from other goods subject to the inspection of the consignee. *Lanata* v. *Grinnell*, 24.

COMMON CARRIER (*Continued*).

2. The common carrier, under the commercial law, is answerable for all losses that do not fall within the excepted cases of the act of God (perils of the seas,) or of public enemies, but he may limit his responsibility by special notice of the liability he means to assume, so that the shipper will be bound to prove negligence or fault in the carrier in case of loss or damage on the goods shipped. *Thomas* v. *Ship Morning Glory*, 269.

3. A steamboat will be held liable for obligations incurred during a trip, whether the trip was authorized by the owners or not.
Dunn v. *Branner*, 452.

4. The bill of lading does not create the contract between the shipper and the common carrier; it has been adopted as a convenient mode of establishing the contract, but is not an exclusive species of evidence. *Ibid.*

5. The refusal of a *common carrier* to take goods for a *particular consignee* is a violation of an obligation to the shipper and not to the consignee,—an action of damages in favor of the consignee will not lie in such a case.
Lafaye v. *Harris*, 553.

COMMUNITY.

1. By the Act of the Legislature of 26th March, 1844, the surviving spouse owes no interest on the share of the community property belonging to the children of the marriage as long as he or she remains single.
Massey v. *Steeg*, 350.

2. Money belonging to the wife, received by the husband during the marriage, constitutes a charge against the community. *Downs* v. *Morrison*, 379.

3. The acceptance by the wife, separated from bed and board, of the community, under Article 2389 of the Code need not be by notarial act; like the heir's acceptance of a succession, it may be either express or tacit.
Williamson v. *Amilton*, 387.

4. The property of the community is liable to seizure, for the debts of the husband contracted before the marriage. *Davis* v. *Compton*, 396.

5. The legal effect of a judgment of separation of property, obtained by the wife, is to dissolve the community, *ipso facto*, from the time of filing the petition for separation. *Snoddy* v. *Brashear*, 469.

6. The wife thus separated in property from her husband, when she does not renounce, is not presumed to accept the community of acquets and gains, existing up to the date of bringing her suit; she has a contingent and eventual right only, to be exercised at the expiration of the time fixed for the community, if she chooses to accept. *Ibid.*

7. When a suit is brought against a married woman upon a promissory note signed by her, with the authorization of her husband, given for the loan of a sum of money, and the petition contains no allegation that the debt inured to the benefit of the separate estate of the wife, or that she was separated in property from her husband—*Held:* That as the petition shows that the debt was contracted during the marriage, it shows, *prima facie*, a debt of the community, and consequently no cause of action against the wife. *Graham* v. *Egan*, 546.

COMMUNITY (*Continued*).

8. A married woman is in general without capacity to bind herself for a debt of the community, and the party who would hold her bound for such a debt, must bring her within some of the exceptions to this rule. *Ibid.*

See HUSBAND AND WIFE—*Lobit* v. *Harman*, 593.

CONFLICT OF LAWS.

1. It is the duty of the courts of each State of the Union to give effect to all acts, deeds, wills and obligations lawfully executed in any other State of the Union when brought in contestation, as far as can be done without the manifest infringement of the settled policy of the State where the contestation arises. *Groves* v. *Nutt*, 117.

2. A daughter under the will of her father, valid by the laws of the State where it was executed, on receiving a legacy of money and bank stock executed an obligation to carry out the provisions of the will, by leaving at her death, if she died without issue, the money and bank stock which she had received to the surviving children of the testator. *Held:* That such an obligation being a valid one by the laws of the State where it was executed, would be enforced by our courts. *Ibid.*

3. A trust-deed, made in the State of Texas, assigning personal property for the benefit of certain named creditors, will not, in the absence of any evidence of the law of Texas, be permitted to prejudice the claim of a creditor of the assignor attaching his assets in the hands of a third person in Louisiana. *Seawell* v. *Green*, 280.

4. Where a husband and wife remove with slaves to this State, from a State where the common law prevails, it is the presumption of our law that the husband is the owner of the slaves. *Martin* v. *Boler*, 369.

5. Where the statutes of another State are not offered in evidence, the law there will be presumed to be the same as our own. *Marshall* v. *Watrigant*, 619.

See JUDGMENT—*McFarland* v. *White*, 394.

CONSTITUTIONAL LAW.

1. The Legislature, besides levying taxes for the support of the State Government, may delegate to the several parishes and municipal corporations of the State a similar power of taxation for the support of a local government and police within their respective limits. There is no constitutional or legal provision inhibiting the taxation of the profession, calling or business of an auctioneer. *New Orleans* v. *Turpin*, 56.

2. The treaty between the United States and France, the effect of which was to suspend the State law imposing a tax of ten per cent. on successions falling to foreign heirs, stipulates: "it shall remain in force for the space of ten years *from the day of the exchange of the ratifications*, which shall be made in conformity with the respective Constitutions of the two countries, and exchanged at Washington within the period of six months or sooner, if possible,"—*Held:* That under such a stipulation, the ratifications did not relate back to the date when the treaty was signed. The treaty did not become operative until the exchange of ratifications on the 11th of August, 1853. *Succession of Shaffer*, 113.

CONSTITUTIONAL LAW (*Continued*).

3. The Act of the Legislature approved May 25th, 1856, entitled "An Act providing for the separation of the Lafourche and Terrebonne Navigation Company from the Barataria Canal Company, and determining the condition of said separation," is unconstitutional and void.

Boykin v. *Schaffer*, 129.

4. The second section of the Act of the Legislature approved the 19th March, 1857, entitled "An Act relative to the payment of expenses incident to the prosecution of criminals," which declares that the fines and forfeitures to be collected, for the violations of the criminal laws of the State, shall be paid into the State Treasury, is unconstitutional, being in violation of Art. 115 of the Constitution, which provides that every law enacted by the Legislature shall embrace but one object, and that shall be expressed in the title. *Bossier* v. *Steele*, 433.

5. The section of the Act of the 20th of March, 1858, entitled "An Act relative to judicial mortgages against the city of New Orleans," which provides that no inscription of a judgment against the city shall operate as a judicial mortgage, is not in violation of the Article of the Constitution which declares that no law shall be passed impairing the obligation of contracts. *New Orleans* v. *Holmes*, 504.

See CRIMINAL LAW—*State* v. *Jumel*, 397.
See SLAVES—*Landry* v. *Klopman*, 345.
See EXPROPRIATION, &c.—*Cash* v. *Whitworth*, 401.

CONSTRUCTION, RULES OF.

See SALE—*Laycock* v. *Bird*, 173.
See CONSTITUTIONAL LAW—*Succession of Schaffer*, 113.
See STATUTES—*Cragg* v. *Westmore*, 344.
State v. *Whetstone*, 376.
See INSURANCE—*Summers* v. *U. S. Ins. Company*, 504.
See CONTRACTS—*Cole* v. *Oglesby*, 371.

CONTINUANCE.

1. The law vests in the District Judge the discretionary power of continuing a case, if he thinks justice requires it—there is no law to prevent him from granting a brief delay even during the progress of a cause for the purpose of summoning a new witness, either for the State or the accused. But an abuse of this power which might operate prejudicially to the accused, will not be sanctioned; it must be a proper case. *State* v. *Vigoreux*, 309.

See WARRANTY—*Butler* v. *Watts*, 390.

CONTRACTS.

1. By a contract between plaintiff and defendant, the former bound himself among other things to put the shell roads of the city in good repair within sixty days thereafter. It was stipulated that the contractor should be deemed to be in default by the mere act of his failure in any particular, and the City Council was so authorized to declare it, without applying to a court, &c., &c. More than a week having passed, and the plaintiff not having commenced work, the City Surveyor reported the fact to the Board of Assistant Aldermen, and advised that the contract be declared forfeited. The advice was not immediately acted upon, and plaintiff began the work

CONTRACTS (*Continued*).

and before the sixty days had elapsed put *most* of the roads in repair. The City Council then declared the contract forfeited, and plaintiff brought suit for *damages*. *Held:* That by the terms of the contract the city had the right at any time to declare it null for neglect on the part of plaintiff. But it was not competent for the city, after having been notified of the neglect of plaintiff to commence the work, subsequently, to stand by and see him prosecute the work without objection, and then insist upon such delay in the commencement, as a forfeiture. The Council should have acted promptly when notified of the neglect. The plaintiff did not comply fully with his contract, he has, therefore, no action for *damages* against the city, he is only entitled to compensation for the benefit which the city derived from his labor. *Carland* v. *New Orleans*, 43.

2. The obligation of the contractor was to complete the work within sixty days from the date of the contract, and not from the commencement of the work. *Ibid.*

3. Where a contract belongs to a class which is reprobated by public policy it will be declared void, although in that particular instance no injury to the public may have resulted. *Firemen's Association* v. *Berghaus*, 209.

4. The plaintiff had stored his cotton in defendant's warehouse and taken a receipt, in the margin of which were inserted the words "Fire-proof Warehouse." The same words were inserted at the head of their advertisements in the papers. *Held:* That the words so inserted formed no part of the contract, and that without proof of the plaintiff having been deceived thereby, or of fraud, or an attempt to deceive, the defendants could not be rendered liable for the loss of the cotton by fire.

Cole v. *Oglesby*, 371.

5. Where a contract was alleged to have been made, by which the agent of a company bound himself to a party subscribing for stock, to take it off his hands at the expiration of a certain time—*Held:* that to be binding, such a contract should have been reciprocal so that either party might enforce it. *Vicksburg, Shreveport and Texas Railroad Co.* v. *Terry*, 419.

6. Where the surviving widow agreed to sell a plantation, she having purchased one part of it at a sheriff's sale by which she acquired no title, and thinking herself owner of the remaining portion, as partner in the community,—*Held:* that she could not be made liable for the penalty, as she was induced to promise to sell by an error of fact and law.

Williams v. *Hunter*, 476.

7. Where the contract between the plaintiffs and defendant was "*to do and perform, during the space of five years from the 22d of July*, 1850, *all the work necessary for building wharves, and repairing and keeping in good order the levee and the wharves, in front of Municipality No.* 1, etc.—*Held:* That the plaintiffs were bound to do, at all times, the work necessary to repair and keep in good order, the wharves and levee, and to leave them in good order at the expiration of the period named.

Davis v. *New Orleans*, 624.

See POLICE JURY—*DeRussy* v. *Davis*, 468.

CORPORATIONS.

1. There is no law which prevents a corporation from causing some of its works to be built, with an understanding with the contractor that he shall be permitted to reimburse himself by the receipt of the toll arising from the same. *Boykin* v. *Shaffer*, 129.

2. When the charter of an incorporated company provides that a mortgage stockholder may transfer his stock and be released from his mortgage, upon the new stockholder furnishing mortgage to the satisfaction of the President and Directors of the company, no personal liability on the part of the original stockholder remains, after a transfer so made. *Haynes* v. *Palmer*, 240.

3. The obligation of a stockholder for contribution upon his subscription to the capital stock, being intended by its terms to secure the payment of any loans of money effected by the company, it was *held* the plea of prescription could not be maintained where the suit against the stockholder was brought in less than ten years after the maturity of the first series of the bonds of the company. *Haynes* v. *Wall*, 258.

4. The ordinances of an incorporated town directing work to be done upon streets, and not involving the necessity of giving out obligations beyond what the current revenues of the town may meet, are not within the prohibitory Act of the Legislature of March 15th, 1855, which declares that the authorities shall not contract any debt or liability without providing, in the ordinance creating the debt, the means of paying the principal and interest. *Reynolds* v. *Shreveport*, 426.

5. Where it is alleged that a municipal corporation has exercised a lawful power in an injurious and malicious manner, the presumption will be in favor of the propriety and good faith of the acts of the corporation, and a complainant must make out a clear case of willful oppression to obtain relief from the courts. *Ibid.*

6. Where a suit was brought by a corporation upon a note given for shares of stock of the corporation—*Held:* That the maker of the note, as a stockholder, could set up, by way of defence, any illegality in the charter, or any informality in the organization of the corporation. *East Pascagoula Hotel Co.* v. *West*, 545.

See BANKS—*Cockburn* v. *Union Bank*, 289.
See TAXES, &c.—*State* v. *Southern Steamship Co.*, 497.

COSTS.

See CONSTITUTIONAL LAW—*Bossier* v. *Steele*, 433.

COURTS.

1. The Mayor of the town of Jackson being by law *ex officio* Justice of the Peace, has the power to issue warrants for the arrest of criminals. *Maguire* v. *Hughes*, 281.

2. The error of a magistrate in issuing a warrant without an affidavit, will not render him liable for damages if he acted in doing so in good faith, and for what he deemed to be the public good. *Ibid.*

3. A warrant issued by a Justice of the Peace to arrest a criminal is a complete protection to the Constable acting under it, and those called on by him to assist in executing it. *Ibid.*

COURTS (*Continued*).

4. The court may authorize an intervenor to bond sequestered property.
Collins v. *Edwards*, 342.

See JURISDICTION—*De la Croix* v. *Gaines*, 171.
D'Armond v. *Pullen*, 137.
See WILLS—*Clark* v. *Gaines*, 138.
See JURY—*State* v. *Doyall*, 418.
See STATUTES—*State* v. *O'Conner*, 486.
See EXECUTORS—*King* v. *Lastrapes*, 582.

CURATOR.

1. A curator of a vacant succession who has been regularly appointed by a court of competent authority, cannot be called upon to account for any funds of the succession in his hands, before any other court than the one in which the succession has been opened. *Boyce* v. *Davis*, 554.

2. When the amount of a debt due the succession by the curator has been inventoried, he is thereby charged with so much money in his hands due the succession—he cannot be sued for such a debt; the proper remedy is to call upon him to account for it as funds in his hands, before the court in which the succession has been opened. *Ibid.*

See SUCCESSION—*Succession of Thompson*, 263.
See EXECUTOR—*Succession of Martin*, 557.

CRIMINAL LAW.

1. Dying declarations of the deceased are admissible, although given in the absence of the prisoner. Counsel for the prisoner asked the question of a witness who had testified as to the dying declarations of the deceased, "From your knowledge of the character of the deceased, and from her conduct on the occasion of the conversation held with you by her, do you think she was under a religious sense of her responsibility to her Maker?"—*Held:* That the question was inadmissible.
State v. *Brunetto*, 45.

2. The Supreme Court has no jurisdiction to revise the judgment of the District Court refusing a new trial, the motion for which was based on the misconduct of the jury; for in criminal cases the jurisdiction of the Supreme Court is restricted to questions of law, and the conduct of the jury involved matters of fact. *Ibid.*

3. The right given by statute to persons in confinement under a judgment of conviction rendered in a criminal prosecution, of making the appeal returnable before the Supreme Court at its next term, wherever held, and to have it tried by preference, is a right given only to the prisoner. The State has not the right to have the appeal returnable out of the usual course of appeals. *State* v. *Peter*, 232.

4. It is a general rule, that in an information or indictment for a statutory offence, it is sufficient to follow the words of the statute.
State v. *Keogh*, 243.

5. The test whether the plea of *autrefois acquit* is a sufficient bar in any particular case, is whether the evidence necessary to support the second indictment would have been sufficient to have procured a legal conviction upon the first. *Ibid.*

CRIMINAL LAW (*Continued*).

6. It is too late after conviction in a criminal case, to raise an objection to a juror for a cause existing anterior to the swearing of the jury.
State v. *Nolan*, 276.

7. It is a good cause of challenge on the part of the State, that a juror has conscientious scruples against the infliction of capital punishment. *Ibid.*

8. Where it appears that the accused had sufficient time to have filed a motion containing all his grounds for a new trial, the refusal of the court below to permit additional grounds to be added on the trial of the motion, and to receive evidence in support of them, held not to be a sufficient ground for reversing the judgment. *Ibid.*

9. The Act "relative to slaves," approved March 19th, 1857, does not require a preliminary examination of slaves charged under oath with crimes.
State v. *Oscar*, 297.

10. The Supreme Court is without jurisdiction to fix a day for the execution of convicts. *Ibid.*

11. The *time* of the execution is not an essential part of the judgment. *Ibid.*

12. It is the duty of the Sheriff to execute the sentence, even after the day fixed has lapsed by reason of an appeal, and in case of his failure, the Executive of the State, bound by the Constitution to see the laws faithfully executed, would cause the legal execution of the convict. *Ibid.*

13. Under an indictment for forgery and uttering as true a forged "order for the payment of money,' which is set forth *in hæc verba* in the bill of indictment, the accused cannot except to the admission in evidence of an instrument corresponding exactly with that set forth in the indictment, upon the ground that it is styled in the bill "an order for the payment of money," whereas it is in reality a "check."
State v. *Crawford*, 300.

14. A check is an order for the payment of money. Any lack of definiteness or technicality in the name given to the instrument alleged to have been forged, is cured by setting forth the instrument in full in the bill.
Ibid.

15. The statute against carrying concealed weapons does not infringe the constitutional right of the people to keep or bear arms; it is a measure of police prohibiting only a particular mode of bearing arms, which is found dangerous to the peace of society. *State* v. *Jumel*, 399.

16. A prosecution for the "offence" is only barred by the lapse of one year.
Ibid.

17. On appeal taken by a slave convicted of a capital offence and sentenced to death—*Held:* That although no counsel appeared for the accused and no assignment of errors was made in the Supreme Court, the judgment should be reversed and the accused discharged, as it appeared from an inspection of the record that he had been convicted of an offence under a statute which had been repealed since the conviction took place.
State v. *Henderson*, 489.

18. Where two parties were indicted together under the Act of the 6th of March, 1819, and there were two counts in the indictment, one charging

CRIMINAL LAW (*Continued*).

the defendants with having inveigled, taken, stolen, and carried away a certain slave, and the other charging them with having aided the same slave in running away from the service of his master, and being tried together, upon the same evidence, the jury convicted the one on the first charge, and acquitted him on the second; and acquitted the other on the first charge, and convicted him on the second—*Held:* That there is no impossibility in the co-existence of the crimes detailed in the indictment, and the commission of them by one or more individuals at the same time, and consequently there is no repugnancy in the counts, or the findings under them. *State* v. *Thompson*, 515.

19. The defendants were indicted for inflicting inhuman and cruel treatment on a slave, the property of one of them.—*Held:* That the sections of the Act of the Legislature of 1806, called the Black Code, under which the indictment was framed, are not repealed by the Act of 1855 relative to crimes and offences, nor by the Act of 1857 relative to slaves. *State* v. *White*, 573.

20. The terms conviction and offence used in the Act, imply a prosecution by information or indictment, and not a proceeding by suit to recover a fine. *Ibid.*

21. The appellate court has no power to reverse the judgment of the lower court on the ground that the jury disregarded the instructions of the Judge. *Ibid.*

See BONDS—*Sartorius* v. *Dawson*, 111.
See CONTINUANCE—*State* v. *Vigoreux*, 309.
See STATUTES—*State* v. *O'Connor*, 486.

DAMAGES.

1. When the process of the court is used in good faith damages should not be allowed beyond the actual amount sustained by the party against whom it was used. *Biggs* v. *D'Aquin*, 21.

2. Where the defendant whose steamboat had been seized for an inconsiderable debt could easily have released it by giving bond, he should not be permitted to tax the party causing the seizure with damages for the delay of his boat in port, under the pretence that it was under seizure—*volenti non fit injuria*. *Ibid.*

3. In the assessment of damages in a suit upon an attachment bond, the rule is that the plaintiff shall recover the damages actually sustained and no more; unless in a case where the attachment was utterly unfounded and malicious. *Moore* v. *Withenburg*, 22.

5. A lessor who instead of resorting to the process of law, uses intimidation or threats of police officers to expel the lessee, will be liable in an action for damages. *Jones* v. *Pereira*, 102.

6. The law generally considers the tax and costs as the only damage which a party sustains by the defence of the suit against him. *Young* v. *Courtney*, 193.

7. In an action for vindictive damages for an unfounded and malicious suit, both malice and want of probable cause must be alleged and proved. *Transit Company* v. *McCerren*, 214.

DAMAGES (*Continued*).

8. The measure of damages to be recovered on an attachment bond, is the actual expense and loss resulting from the levying of the attachment, including the fees of counsel for professional services rendered exclusively in relation to the attachment. *Ibid.*

9. When directly after a seizure under execution of property not liable to be seized, the plaintiff in the seizure disavows the act of the officer, no action will lie against him for damages; but when no disapprobation of the conduct of the officer is manifested, and the plaintiff permits the property seized to remain under seizure for his benefit, he is to be considered a co-trespasser with the officer by whom the illegal seizure was made. *Harrison* v. *Mitchel*, 260.

10. An employer is not responsible for acts of his overseer, which are not done in discharge of duties for which such overseer was engaged; nor is he responsible for the acts of his slaves used by his overseer, to assist him in the performance of such unauthorized act. *Boulard* v. *Calhoun*, 445.

11. The owner of a slave is not liable for exemplary damages for any offence, or quasi offence, of his slave, unless the slave, in committing the offence, acted under the command of his master, who thereby became an active participant in the tort or crime done. *Ibid.*

12. Damages cannot be allowed for a frivolous appeal, when there is no moneyed judgment upon which they could be assessed. *Long* v. *Robinson*, 465.

13. In an action brought to recover damages alleged to have been suffered by plaintiff in consequence of a collision between his schooner and a steamboat, occasioned by the want of care on the part of such steamboat—*Held:* That the towage, costs of materials and repairs, to make the vessel as good as before, and her expenses while undergoing repairs, are the elements of damage to be estimated by the court. The remote or consequential damages, growing out of the supposed loss of profits, should not be considered. *Minor* v. *Steamer Picayune*, 564.

See CONTRACTS—*Carland* v. *New Orleans*, 43.
See SUPREME COURT—*Jones* v. *Pereira*, 102.
Fitzgerald v. *Boulat*, 116.
See PRESCRIPTION—*Foley* v. *Bush*, 126.
Lutz v. *Forbes*, 609.
See COURTS—*McGuire* v. *Hughes*, 281.
See EXECUTORS—*Capdevielle* v. *Erwin*, 286.
See LEASE—*Paryoud* v. *Tourne*, 292.
See ACTION—*Knox* v. *Payne*, 361.
Laborde v. *New Orleans*, 326.
See ATTACHMENT—*Phelps* v. *Coggeshall*, 440.
See COMMON CARRIER—*Lafaye* v. *Harris*, 553.

DEFAULT.

See PRACTICE—*Blessy* v. *New Orleans Oil Factory*, 310.

DEPOSIT.

1. A steamboat is responsible for money deposited by travelers, when the deposit is a necessary one. *Dunn* v. *Branner*, 452.

2. A person receiving a voluntary deposit is liable only for gross negligence or fraud. *Ibid.*

DOMICIL.

1. In deciding the question as to a man's actual domicil, courts of justice will look to the real facts of the case, and the declarations of a party on that subject, made for the purpose of establishing a fictitious domicil, will be rejected. *Watson* v. *Simpson*, 337.

See CASES AFFIRMED, OVERRULED, &c.—*Wesson* v. *Marshall*, 436.

DONATIONS.

1. A donation of a sum of money at a future time by a marriage contract does not require a delivery, neither is it necessary that it should be in the form of a testament to render it valid. *Wood* v. *Stokes*, 143.

2. Donations by marriage contract cannot be impeached or declared void on pretence of want of acceptance. C. C. 1732. *Ibid.*

3. The Act of the Legislature of 31st of March, 1850, amending Art. 1739 of the Civil Code, did not remove the restriction imposed by Art. 1745 of the Code, upon persons contracting a second or a subsequent marriage who have children by a former one, from giving to the spouse of the second or subsequent marriage more than the least child's portion as an usufruct and not to exceed one-fifth of the donor's estate—the latter Article is unrepealed and in full force. *Ibid.*

See WILLS—*Clarkson* v. *Clarkson*, 422.

ELECTIONS.

1. The Act of the Legislature relative to contested elections, (Rev. Statutes, 217,) does not embrace the case of a contested election of the Judge of a District Court out of the city of New Orleans. *State* v. *Judge 2d Judicial District*, 89.

2. Out of the parish of Orleans there is no law providing for a judicial scrutiny into the votes for any other than parish officers. *Ibid.*

3. In the absence of statutory authorization the courts are without jurisdiction *ratione materiæ*, to entertain the case of a contested election, and the consent of parties cannot give them jurisdiction. *Ibid.*

4. A Judge of a district embracing two parishes is not a parish officer within the meaning of the Act relative to contested elections. *Ibid.*

5. To contest an election, there should be an averment that the illegalities charged *did* alter the result, not that it was probable the result had been changed. *Lanier* v. *Gallatas*, 175.

6. The principal object of an election is the casting of votes, and the unconstitutionality of the police provisions of an election law cannot render the votes illegal, and thus disfranchise the electors; the citizens have the prerogative of voting, and the Legislature cannot, by encompassing with unconstitutional provisions, an election law, make the votes of electors null and void. *Andrews* v. *Saucier*, 301.

7. If the votes of the citizens are deposited, the intent and design of an election are accomplished. It would be unwise to make an election depend on some unconstitutional provision of the police part of an election law, or on the failure to comply with its directory provisions; for then almost every election would be contested; the people would be virtually deprived of their elective power, and the tenure of office would depend on the will of juries and courts. *Ibid.*

ELECTIONS (*Continued*).

8. The public good demands that the will of the people, as determined at the ballot box, should not lightly be disturbed. *Ibid.*

9. If the voters think proper to go forward and vote under a defective law, those who were candidates ought to be the last to complain, when the result has been affected by neither the unconstitutionality of the law, fraud, error nor collusion. *Ibid.*

10. Justices of the Peace are clothed with certain judicial powers; but the Constitution makes a difference between Judges and Justices of the Peace. Justices of the Peace are not included in the word "Judges," in the 82d Article of the Constitution, which declares, that "it shall be the duty of the Legislature to fix the time for holding elections for *all Judges*, at a time which shall be different from that fixed for all other elections. *Ibid.*

11. The phrase, "the next general election," occurring in the concluding portion of Art. 79 of the State Constitution, has reference only to the general election of Clerks throughout the State, which is evidently designed by the Constitution to take place every four years.

Ransdell v. *Ariail*, 459.

See APPEAL—*Lanier* v. *Gallatas*, 175.

EMANCIPATION.

1. Since the Act of the Legislature of March 6th, 1857, prohibiting the emancipation of slaves in this State, the right of a slave to be emancipated by the will of his master, can no longer be enforced.

Delphine v. *Guillet*, 248.

2. If the law should be changed, the remedy of the slave might be revived. *Ibid.*

See SLAVES—*Marshall* v. *Watrigant*, 619.

ESTOPPEL.

1. A party who has pointed out property, is estopped from objecting to the action of the Sheriff in levying upon it. *Berlin* v. *Gilly*, 461.

See SUCCESSION—*Martin* v. *Boler*, 369.

EVIDENCE.

1. The defendant being sued on his note payable to plaintiff's order, set up as a defence that he had sold to the plaintiff, by notarial act, the stock in trade, &c., of a coffee house, the price of which was composed in part of the note sued on. The notarial act of sale contained an acknowledgment that the price was paid in "current money." It was *held:* That as the plaintiff had held the note at the time of the sale, and after the sale had continued to hold it, without making any demand of payment until it was nearly prescribed, parol evidence should be let in to establish that the note sued on formed part of the price of the sale.

Saramia v. *Courrégé*, 25.

2. Dying declaratioas of the deceased are admissible, although given in the absence of the prisoner. *State* v. *Brunetto*, 45.

3. Counsel for the prisoner asked the question of a witness who had testified as to the dying declarations of the deceased, "From your knowledge of

EVIDENCE (*Continued*).

the character of the deceased, and from her conduct on the occasion of the conversation held with you by her, do you think she was under a religious sense of her responsibility to her maker?" *Held:* That the question was inadmissible. *Ibid.*

4. The testimony of a partner who has transferred his interest to his copartner, notwithstanding a release by the plaintiffs, must always be received with grave suspicions. *McLaughlin* v. *Sauvé*, 99.

5. Although parol proof, to establish an agreement to pay eight per cent. interest, may be received without objection, yet the court cannot give judgment for that rate, "It is of the essence of legal evidence in support of it, that it be written." *Ibid.*

6. Where a seasonable though fruitless effort had been made to examine a witness, whose testimony had been taken under commission, in relation to contradictory statements alleged to have been made by him, proof of such contradictory statements was properly received.
Fletcher v. *Henley*, 191.

7. Evidence is admissible to show that after the rendition of the tutor's account the minors received from the tutor, land, slaves, &c., of a value equivalent to the tutor's liability, and that it was given and received in discharge of that liability. *Chapman* v. *Chapman*, 228.

8. Parol proof is admissible to explain latent ambiguities.
Doyle v. *Estornet*, 318.

9. Parties cannot be controlled in the order in which they introduce their evidence. *Ibid.*

10. It is sufficient proof of notice of the transfer of a judgment to show that it was left at the place of residence of the judgment debtor with his wife, as in case of a citation in civil process. *Blondin* v. *Christophe*, 324.

11. The vendor of a slave by a notarial act, duly recorded, having subsequently sold the same slave by act under private signature to a second vendee, in a suit by the first vendee against the second vendee to recover possession of the slave—*Held:* That evidence having been received without objection to show that the vendor remained in possession of the slave down to the date of the second sale, the testimony of witnesses was admissible to prove that the price of the first sale had not, in fact, been paid, notwithstanding the enunciation in the bill of sale to that effect.
Harper v. *Pierce*, 340.

12. Parol testimony is not admissible, to show that any other terms of sale were announced by the Sheriff, than those contained in the advertisement and *proces verbal* of sale. *Lewis* v. *Labauve*, 382.

13. In a suit brought to recover the value of a slave from the person hiring him, on the ground that the slave was killed on the premises, and while in the possession of the person so hiring, and that the person refuses to account for his death—*Held:* That the Coroner's inquest over the body of the slave was inadmissible as evidence, being "*res inter alias acta.*"
Ford v. *Simmons*, 397.

EVIDENCE (*Continued*).

14. When a slave dies in the possession of the person hiring him, the person so hiring is bound to pay the value of said slave to his owner, unless he can show that he is not liable for his loss, because his death was produced by some cause for which he is not legally accountable—this is an exception to the general rule that the actor must prove his cause. *Ibid.*

15. The *onus probandi* lies upon a party who is obliged to free himself from liability by proving a fact, when the knowledge of that fact is supposed to be more within his reach than that of his adversary. *Ibid.*

16. Parol evidence is admissible to explain the nature of the sale of improvements upon land sold, and their location, extent and value, when there is ambiguity in the act of sale with regard to them.
McLeroy v. *Duckworth*, 410.

17. In a suit brought by plaintiff to recover damages against a planter for the violent ejection of herself from her house, the removal of her goods, wares and merchandize from her store, and the destruction of the store itself by defendant's overseer and slaves—*Held:* That testimony going to show that the business carried on by plaintiff consisted chiefly in illegal traffic with slaves, was admissible to rebut the claim for damages.
Boulard v. *Calhoun*, 445.

18. In an action, "*en déclaration de simulation*," where plaintiff has alleged the utter insolvency of defendant—*Held:* That authentic acts of sale of land and slaves to defendant, are admissible in evidence to establish the fact of his solvency, and consequent ability to make the purchase of the property in controversy. *Hyman* v. *Bailey*, 450.

19. A party claiming title under a Sheriff's sale made by virtue of a *fi. fa.* in support of his title, must produce not only the sale of the Sheriff, but also the writ of execution, the Sheriff's return and the judgment. *Ibid.*

20. The Act of 1855, with regard to the effect of Sheriff's sales, does not make the original, or copy of such a sale, sufficient proof, in itself, of a title translative of property. *Ibid.*

21. An agreement for the extra judicial partition of land cannot be established by parol evidence. *Bach* v. *Ballard*, 487.

22. The *proces verbal* of a probate sale is *prima facie* evidence of title, without the production of the decree of the court therein recited.
Ranson v. *Long*, 523.

23. A notarial act of transfer of property by an executor, without the production of the *proces verbal* of the adjudication, cannot be received to prove title *per se*, or to show the order of court, or a Sheriff's sale under it.
Lanfear v. *Harper*, 548.

24. A rule on the Recorder to produce the original of an act under private signature recorded in his office with the oath of the party, to obtain the order, and the answer of the Recorder to the rule, that the original had probably been delivered to some of the parties interested, are not sufficient to justify the introduction of secondary evidence. It should be shown by

EVIDENCE (*Continued*).

the oath of the party that an effort had been made to obtain the original by inquiry of those through whom title is claimed.

Lawrence v. *Burris*, 611.

See APPEAL—*Lanier* v. *Gallatas*, 175.
See INSOLVENCY—*Gwartney* v. *His Creditors*, 188.
See PLEADING—*Hale* v. *New Orleans*, 499.
See INSURANCE—*Summers* v. *U. S. Insurance Co.*, 504.

EXECUTION.

1. As a general rule the execution of a judgment cannot be enjoined by any other court than that from which the writ issued.

Donnell v. *Parrott*, 251.

2. Unless a necessity exists for it and a manifest injury would otherwise be done, no court, other than that rendering the judgment, has jurisdiction over the execution. *Ibid.*

3. A party will not be permitted to arrest an execution by a defence of compensation, which he might have made, but omitted to make in the suit wherein the judgment was rendered, the execution of which he seeks to arrest. *Ibid.*

4. The implements by which the business of a commercial firm is carried on are not legally subject to seizure. *Harrison* v. *Mitchell*. 260.

5. Where the plaintiff in execution procured the appointment of a *curator ad hoc* to represent defendant in the appointment of an appraiser, the absence of the defendant or other sufficient cause must be shown to justify the appointment. *Farrell* v. *Klumpp*, 311.

6. And if the debtor conceals himself, besides service upon the *curator ad hoc* appointed to represent him, notice should also be left at the place where the defendant last resided. *Ibid.*

7. Allegations that a judgment was obtained through fraud and other ill practices, are too general to authorize the arrest of its execution.

Rooks v. *Williams*, 374.

8. Where a judgment is sought to be executed after the person's death, in whose favor it was obtained, it is not necessary that the *fi. fa.* should issue in the name of the deceased person's legal representatives. *Ibid.*

See SALE JUDICIAL—*Morse* v. *McCall*, 215.
See DAMAGES—*Harrison* v. *Mitchell*, 260.
See PARTNERSHIP—*Thomas* v. *Lusk*, 277.
See CRIMINAL LAW—*State* v. *Oscar*, 297.
See SHERIFF—*Dinkgrave* v. *Sloan*, 393.
Marshall v. *Simpson*, 437.
See COMMUNITY—*Davis* v. *Compton*, 396.
See EXECUTORS—*Stevens* v. *Stevens*, 416.
Castille v. *Chacere*, 561.
See ESTOPPEL—*Berlin* v. *Gilly*, 461.
See HUSBAND AND WIFE—*Holmes* v. *Barbin*, 474.
See SUCCESSION—*Williams* v. *Hunter*, 476.

EXECUTORS AND ADMINISTRATORS.

1. Where one of two joint administrators is prevented by sickness from taking the oath before the court where the administration is granted, but takes it before a Justice of the Peace in another parish and transmits it to the Clerk of the court where the succession is opened, it will satisfy the law in relation to the oath of administrators. *Succession of Penny*, 94.

EXECUTORS AND ADMINISTRATORS (*Continued*).

2. The appointment by administrators residing out of the parish where the succession is opened, of an agent residing in that parish, made before they had qualified, but after the decree conferring upon them the administration, is valid. *Ibid.*

3. Where, by the terms of a will, a bequest is made to the testamentary executor, "in full compensation and satisfaction for all charges and commissions which he may be entitled to as executor," and he enters upon the execution of his trust and manifests no disposition to renounce the legacy, he will be debarred from claiming any other or different remuneration. *Succession of Fink*, 103.

4. The inventory of the estate, which served as the measure of the administrator's bond, is the basis upon which to estimate the commissions of the administrator, and not an inventory taken subsequently without any new bond being given by the administrator. *Shaffer* v. *Cross*, 110.

5. Where an administrator files an account showing a balance due by him to the heir, and asks for its homologation, he cannot be heard to say that the judgment he himself provoked, is not binding upon him as a judgment, because rendered *ex parte*. *Capdeville* v. *Erwin*, 286.

6. The required notices being given, and no opposition being filed to the administrator's account, it was competent for the Clerk to render a judgment of homologation. *Ibid.*

7. An injunction to stay execution upon such judgment, will be dissolved with damages. *Ibid.*

8. A final account of administration of the estate of *W. St. J. E.*, deceased, administrator of *H. L. C.*, deceased, was rendered by the defendant. The widow *C.*, on behalf of herself and of a minor daughter, specially opposed certain items, and prayed that the administrator might be charged with the value of a gin house, etc., belonging to *H. L. C.*'s estate, which were consumed by fire during *W. St. J. E.*'s administration. Three of the heirs of *H. L. C.*, one of whom was the plaintiff herein, filed general opposition, but did not seek to charge the administrator with the value of the gin house. A judgment was rendered on plaintiff's opposition against the administrator for $2,679 08. That judgment was not appealed from and is not now appealable. *Castillo* v. *Elliott*, 363.

9. The plaintiff brought the present action against defendant, as administratrix of said *W. St. J. E.*, to recover damages sustained, as one of the heirs of *H. L. C.*, by the burning of the gin house above mentioned. The defendant plead the aforesaid judgment in bar of this action. *Held:* That the plea was well taken. The judgment liquidated the account between the deceased administrator and the heirs, and particularly the balance due by the former to this plaintiff. *Ibid.*

10. An administrator may show that he signed an inventory under an error of fact. *Martin* v. *Boler*, 369.

11. An administrator does not bind himself personally, and ought not to be concluded by allegations which he may deem it to the interest of the estate to make, in a suit brought by him in his capacity as administrator. *Ibid.*

EXECUTORS AND ADMINISTRATORS (*Continued*).

12. Under Article 1057 of the Code of Practice, the judge is authorized to order execution against an administrator personally, who makes a vague and insufficient answer to a rule, under Articles 1088, 1056, C. P., taken by creditors whose claims have been fixed by a final judgment upon the administrator's account. *Stevens v. Stevens*, 416.

13. Under the Code of 1808, the office of testamentary executor expired at the end of the year, unless it was otherwise expressed in the will, or the term of office was prolonged by the Judge. *Deranco* v. *Montgomery*, 513.

14. The priority of application has weight principally in the appointment of curators to vacant successions, or to application by creditors to be appointed administrators, and then only among persons otherwise having equal rights. *Succession of Martin*, 557.

15. A Judge is not bound to appoint two beneficiary heirs, even with equal claims, administrators of a succession, the law leaving it discretionary with him to appoint one or two, regard being had to the solidity of the appointee. *Ibid.*

16. Allegations of fraud cannot be noticed in an opposition to an application for administration, as they form the subject of an independent litigation, and should not be tried collaterally. *Ibid.*

17. Under an execution issued against an administrator personally, his property was seized, and, pending an opposition made to the seizure, the property was sold; on the trial of the opposition the sale was set aside—*Held:* That such a decree was *ultra petitionem*, as at the time the opposition was filed there had been no sale, and to attack the sale, the plaintiff should have filed an amended petition. *Castille* v. *Chacéré*, 561.

18. Where creditors, whose claims were placed upon the tableau of classification by a judgment of the court, bring a suit against the administrator to dismiss him from office and render him personally liable for their claims—*Held:* That they could not issue execution against such administrator, while the question of his liability was at issue and pending in such suits before the court. *Ibid.*

19. The proper course is to take a rule upon the administrator to show cause why execution should not issue against him personally, of which rule he is to have notice. *Ibid.*

20. In cases where the law makes it imperative upon the Judge *ex officio* to appoint an executor, it does not dispense with the necessary formalities. An appointment made under such circumstances, should be made only after due notice to all parties interested. *King* v. *Lastrapes*, 582.

21. The appointment of a dative testamentary executor without notice of the application, is null. *Ibid.*

22. The power of the Judge to appoint a successor, to an executor or administrator who has not qualified after the expiration of ten days from his appointment, cannot be exercised without first notifying such executor of his appointment. *Ibid.*

23. An administrator will not be permitted to allege his own illegal acts in bar of the action of creditors against him. *Collins* v. *Hollier*, 585.

EXECUTORS AND ADMINISTRATORS (*Continued*).

24. If, at the sale of property administered by him, he becomes the purchaser and goes into possession of the property, he will be held liable for the price. *Ibid.*
25. The neglect of an administrator to file his account within the time prescribed by law, will subject him to destitution from office, and to the payment of ten per cent. interest on the amount due by him to the estate. *Ibid.*
26. The creditors cannot, however, compel a distribution of the funds of the estate by such destituted administrator; they must pursue their remedies against the new administrator to be appointed, who is authorized to demand a full account from the former administrator. *Ibid.*
27. An executor under a will is bound to pay the costs and attorney's fees for presenting the will for probate and defending it when attacked by the heirs, if there should be judgment against him annulling the will, on account of the agency which he had in its dictation. *Close* v. *Close*, 590.

See ACTION—*Woods* v. *Woods*, 189.
See SUCCESSION—*Martin* v. *Boler*, 369.
See PRESCRIPTION—*Deranco* v. *Montgomery*, 513.
See PRINCIPAL AND SURETY—*Lobit* v. *Castille*, 563.
See APPEAL—*Broussard* v. *Robin*, 560.

EXECUTORY PROCESS.

1. The holder of a promissory note, payable at a specific place, secured by an act importing a confession of judgment, is entitled to executory process against the maker, without making authentic proof that the note was presented at that place for payment. *Catalogne* v. *Alva*, 98.
2. The endorsement of the Judge's *fiat* on the back of a petition for an order of seizure and sale, to which an authentic act importing a confession of judgment is attached as a part thereof, is sufficient to constitute a valid order of seizure and sale. *Riley* v. *Christie*, 256.
3. Such order, though it may be appealed from, is not a judgment in the true and legal sense of the term. *Ibid.*

See BILLS AND NOTES—*Wood* v. *Tyson*, 104.

EXPROPRIATION OF PROPERTY.

1. A proprietor is not bound to yield a part of his soil for the construction of a levee, which originally was not required to protect his own land from inundation, but which was rendered necessary by closing a bayou in order to reclaim swamp lands belonging to the State, or to others. *Cash* v. *Whitworth*, 401.
2. A divestiture of vested rights may be effected, not only by a change or destruction of the title to the property, but also by a destruction of the property itself. *Ibid.*

See NEW ORLEANS—*Sarpy* v. *New Orleans*, 349.

FACTORS.

See PRIVILEGE—*Shaw* v. *Grant*, 52.

GARNISHEE AND GARNISHMENT PROCESS.

1. It is not a valid objection to a proper interrogatory to a garnishee, that it requires him to make a statement of his accounts with the judgment debtor. *Roquest* v. *Clark*, 210.
2. It may be necessary and proper, to give a party the full benefit of the statute of 1839, that the garnishee should be submitted to the most pointed inter-

GARNISHEE AND GARNISHMENT PROCESS (*Continued*).

rogatories, but he cannot go beyond the design of the statute of charging the garnishee with property or effects of the judgment debtor, or with some indebtedness to him. *Ibid.*

See APPEAL—*Gustine* v. *N. O. Oil Factory*, 510.

HOMESTEAD ACT.

1. The rights granted the widow, or minor children of a deceased person, by the Homestead Act of 17th March, 1852, vest in them at the time of the death of the deceased—provided their condition of life at that moment of time entitles them to the benefit of the provisions of the Act—their pecuniary circumstances at the time of death of the insolvent, and not at any subsequent time, settles their right to any claim under the Homestead Act. *Gimble* v. *Goode*, 352.
2. Under the Act of March, 1852, entitled "An Act to provide a homestead for the widow and children of a deceased person," the widow, when there are no surviving children or other descendants of the deceased, takes the bounty provided by said Act in full property; but where there are children or other descendants, she has merely a usufructuary right to it. *Succession of Yarborough*, 378.
3. To determine, under the Act to provide a homestead for the widow and children of deceased persons, approved March 17, 1852, whether they are entitled to receive anything from the estate, the sum of their entire property is to be considered, and if it amounts to $1,000, nothing can be withdrawn from the estate, although some one minor heir or the widow may be in necessitous circumstances and not possess the $1000. *Stewart* v. *Stewart*, 398.

HUSBAND AND WIFE.

1. The abandonment by one of the married persons of the other, which is made a ground of separation from bed and board, by Art. 141 of the Civil Code, to be a good cause of action, must have originated while the parties were domiciled in this State. *Muller* v. *Hilton*, 1.
2. Where the marriage took place in New York, and the wife always lived there, the husband, who afterwards established his residence in Louisiana, cannot maintain an action for separation against his wife by summoning her to his domicil in Louisiana. *Ibid.*
3. The general rule being that dotal property is insusceptible of hypothecation, it should appear manifestly from the terms of the marriage contract, that the right claimed for its exercise in a particular case was expressly reserved. *Belouguet* v. *Lanata*, 2.
4. When the marriage contract contained the following clause: "Les immeubles dotaux pourront être aliénés par le futur époux, avec le consentement de la future épouse, pendant le mariage, à la condition expresse, que remploi de leur valeur sera fait en d'autres immeubles."—*Held:* That under such a reservation, the power did not exist to mortgage the dotal property of the wife for money borrowed to pay off a mortgage in favor of the Citizens' Bank, which was binding on the property of the wife thus mortgaged. *Ibid.*
5. The rule that in actions of separation from bed and board both parties should be dismissed when guilty of mutual wrongs, has its qualification,

HUSBAND AND WIFE (*Continued*).

that the wrongs should be similar in nature, and so proportioned in extent as to render it difficult to ascertain which party is mainly in fault. *Thomas* v. *Tailleu*, 127.

6. The joint possession of the husband and wife, is the possession of the one holding the title. *Haile* v. *Brewster*, 155.

7. When the husband and wife removed from another State to Louisiana, and after the removal the husband received money from the estate of the mother of his wife, it was held that the wife had a valid claim therefor against the husband's estate. *Matthews* v. *Matthews*, 197.

8. Art. 1745 C. C., which provides that in the event of a second marriage, the husband or wife having children by the first marriage, can only give to the spouse of the second marriage the least child's portion as a usufruct, and not to exceed a fifth part of the deceased's estate, remains unrepealed. *Succession of Swayze*, 244.

9. In a contest of title between husband and wife, and when the property given to the wife has been entrusted to the husband as her agent, he cannot set up the plea of prescription. *Meadows* v. *Dick*, 377.

10. Where the husband has no adverse title, he cannot defeat his wife's claim to property on account of technical defects in her title, nor can he, being her agent, refuse to surrender the property on account of defects in the title of his principal. *Ibid.*

11. A wife separated in property from her husband, when sued upon an obligation contracted by herself, cannot, in bar to the action, plead that the decree of separation had not been advertised, and that no *fi. fa.* had issued upon her judgment; these objections might properly be raised by third parties. *Campbell* v. *Roubieu*, 449.

12. When a wife authorized by the Judge prosecutes a suit alone, and unassisted by her husband, an appeal from a judgment rendered in her favor will not be dismissed on the ground that the appeal bond was not executed in favor of her husband as well as herself. *Holmes* v. *Barbin*, 474.

13. Although a wife may have acquired property in fraud of her husband's creditors, yet, if her title be a reality, and not a mere sham, they cannot seize it directly for his debts, but should first resort to the revocatory action. *Ibid.*

14. When the husband is insolvent, a judgment of separation of property will not be declared null, for want of execution. *Ibid.*

15. Where the wife sells her property, and the husband receives the price in negotiable paper, the husband may sue on the note in his own name, or in that of the commercial firm of which he is a member. *Wright* v. *Railey*, 536.

16. The knowledge of the husband of any equities which might be pleaded against the note, must be considered as the knowledge of the firm. *Ibid.*

17. The wife, not separate in property from her husband, cannot be made liable for the amount of a note executed by her husband during the marriage, although the consideration of the note was the price of property purchased

HUSBAND AND WIFE (*Continued*).

in the name of the wife, the object being to replace her paraphernal property, which the husband had alienated. *Ibid.*

18. The general mandate to the husband, to act as agent for the wife separated in property from him, confers upon him only a power of administration; he must have an express and special authority to acknowledge a debt, or to draw or indorse bills of exchange or promissory notes.

Laplante v. *Briant*, 566.

19. The husband is the head and master of the community, and the debts which he contracts, as a general rule, enter into the community; the cases in which the wife is bound are exceptional, and the party seeking to hold her responsible must make the proof which renders her liable.

Lobit v. *Harman*, 593.

20. The mere fact that the goods furnished during the existence of the community are for the family use, does not, in general, render the wife liable, although the husband has no separate estate, and no other property except the revenues of the wife's property, and his own industry, which fall into the community. *Ibid.*

21. The wife is not responsible for supplies furnished to the husband for his own use, particularly when it is not shown, that the revenues of the wife's property were not ample to pay the ordinary expenses of the family.

Ibid.

22. Where in a marriage contract it was stipulated, that in case of the death of either party, the property should return to the estate of the person to whom it had belonged—*Held:* That there is nothing in such a contract to prevent a widow in necessitous circumstances, from claiming her *marital fourth* under Article 2359 of the Civil Code.

Succession of Doucet, 613.

23. Where it is sought to make the wife personally liable for an account, no presumption of its correctness can be formed from the mere fact of its rendition to the husband, in whose name the account was kept, and no objection having been made on the part of the wife; she cannot be charged except for such items as are shown to have inured to the benefit of her separate estate, or such expenses as under Art. 2409 C. C. she is bound to support alone. *Powell* v. *Hopson*, 626.

See DONATIONS—*Woods* v. *Stokes*, 143.
See PRACTICE—*Fletcher* v. *Henley*, 150.
See SUCCESSION—*Conner* v. *Conner*, 157.
Succession of Hunter, 257.
See WILLS—*Matthews* v. *Matthews*, 197.
See CONFLICT OF LAWS—*Martin* v. *Boler*, 369.
See COMMUNITY—*Downs* v. *Morrison*, 379.
Snoddy v *Brashear*, 469.

INJUNCTION.

1. Where the plaintiff enjoined the execution of a judgment, alleging that it had been paid, and praying that it should be decreed to have been satisfied, the District Judge erred in rendering a final judgment on overruling defendant's motion to dissolve the injunction.

Knox v. *The Coroner*, 88.

INJUNCTION (*Continued*).

2. The conservatory process of injunction in such a case is separate from the principal demand, which should be put at issue regularly, before a final judgment could be rendered. *Ibid.*

3. An affidavit for an injunction stating, that "*the facts and allegations, as set forth in the foregoing petition, are true, as therein alleged, to the best of his (affiant's) knowledge and belief,*" is sufficient. *Ibid.*

4. It is not necessary that an affidavit for injunction made by an agent, should set forth the absence of the principal, it is sufficient to prove on the trial that he was absent at the time the affidavit was made.
Wilson v. *Curtis*, 601.

See BONDS—*Sartorius* v. *Dawson*, 111.
See EXECUTION—*Donnell* v. *Parrott*, 251.
See EXECUTORS—*Capdevielle* v. *Erwin*, 286.

INSOLVENCY AND INSOLVENT PROCEEDINGS.

1. The burden of proof is upon the party opposing the appointment of a syndic, on the ground that he was elected by a person who was not a creditor.
Gwartney v. *Creditors*, 188.

2. The first section of the Act of the Legislature of 1855, relative to forced surrenders and the mode of making the same, makes it the duty of the Judge to decide upon the sufficiency of the cause for compelling the surrender, and the proceeding is, therefore, a summary one, to be tried without the intervention of a jury. *Savage* v. *Jeter*, 239.

3. When the Deputy Sheriff, who made the return, did not make the demand, but the evidence shows the demand was actually made by another deputy, the demand is adequately proved. *Ibid.*

INSURANCE.

1. In regard to re-insurance, the custom among underwriters, in the city of New Orleans, is to divide the risk and not to take the whole of it; and when the application is silent, this is always understood.
La. Mutual Insurance Co. v. *New Orleans Insurance Co.* 246.

2. Under a clause in a policy of insurance, effected upon a vessel for the benefit of the owner, that it should become void upon assignment thereof, transfer of interest or change of command—*Held:* That the seizure of the vessel by the Sheriff at the suit of a creditor, would not have the effect of avoiding the policy. *Marigny* v. *Home Mutual Insurance Co.*, 338.

3. Nor could the policy be avoided, where the assured agreed "that the vessel should, during the continuance of the policy, be completely found with master, officers and crew," on the ground that she was not so found while laid up under seizure. *Ibid.*

4. By the terms of the application for a policy of insurance, it appeared that the slave whose life was insured was a laborer in a tobacco warehouse, and the policy declared that he was not to be employed in a more hazardous occupation; the slave was subsequently drowned in the river Mississippi by falling from a plank whilst walking on it from a steamboat

INSURANCE (*Continued*).

to the shore, having been sent by his master up the coast, to be employed on a sugar plantation.—*Held:* That as the slave was not lost while actually employed on the sugar plantation, and the master was not prohibited by the policy from removing the slave from New Orleans, except that he could not be taken to more southern localities, the company was liable for the loss. *Summers* v. *U. S. Insurance Co.*, 504.

5. *Held:* That parol evidence was admissible to show that the written assignment of a policy of insurance, was intended as collateral security for an obligation which had been discharged before the suit was brought on the policy. *Ibid.*

6. *Held:* That testimony to show that the company would not have insured at the rate of the policy, if it had been known that the slave would have been subjected to the risk of a voyage on a steamboat, was properly refused. *Ibid.*

INTEREST.

1. An acknowledgment in writing over his signature by the debtor, that a demand has been made upon him, is sufficient to put him in default, and to make his debt bear interest from the date of his acknowledgment. *Levistones* v. *Marigny*, 353.

2. Where property bearing fruits is sold, the vendee cannot avoid the payment of interest, even when he has a right to require security against eviction, unless he makes a tender or deposit of the price. *Liddell* v. *Rucker*, 569.

See EVIDENCE—*McLaughlin* v. *Saure*, 99.
See EXECUTORS—*Collins* v. *Hollier*, 585.

INTERROGATORIES ON FACTS, &c.

1. A party in answering interrogatories on facts and articles, is not permitted to state his conclusions of law on the facts. *Owen* v. *Brown*, 201.

2. Where a party interrogated on facts and articles, fails to make a sufficient answer, the interrogatories will be taken for confessed. *Ibid.*

3. A party called on to answer interrogatories on facts and articles in open court, has not the right of reading answers previously prepared, but may be required to answer orally. *Boone* v. *Pelichet*, 203.

JUDGMENT.

1. Where consent is the basis of a judgment, it must appear before the appellate court by proof independent of the judgment itself. *Moulton* v. *Hodges*, 38.

2. A judgment obtained against the surety cannot be enforced, if the principal has been released from the same debt by a judgment in his favor, annulling the contract which gave rise to the obligation. *Dickason* v. *Bell*, 249.

3. When the plaintiff fails to make out his case, the judgment should be one only of nonsuit. *Doyle* v. *Estornet*, 318.

JUDGMENT (*Continued*).

4. A judgment dismissing a third opposition to an order of sale of property, is final if unappealed from, even though it be rendered *ex parte*; and is a complete bar to setting up the pretended title anew.

Fonda v. *Denton*, 343.

5. The failure to appear and prosecute the opposition cannot deprive the party interested of the benefit of the judgment. *Ibid.*

6. A judgment confirming the appointment of a testamentary tutor to a minor, cannot be treated as an absolute nullity by an application for another appointment, nor can it be attacked collaterally in the form of an opposition. A direct action should be brought to annul it.

Tutorship of Hughes, 380.

7. In the absence of proof of the laws of another State where a judgment was rendered, our courts will give the same effect to the judgment, when a reconventional demand was set up, that would be given when a like demand is set up in our courts. *McFarland* v. *White*, 394.

8. The sickness of counsel, and inability to attend in person to the suit when it was tried, is no ground for annulling a judgment which was obtained without fraud by the opposite party. *Ibid.*

9. Where a suit was brought against the owners of a steamboat for the value of a slave, alleged to have been carried off on the boat, and during the pendency of the suit, the slave was recovered by the plaintiff—*Held:* That the plaintiff was nevertheless entitled to prove and recover judgment, for the amount he had expended in recovering the slave.

Chaffe v. *St. Charles*, 415.

See PRACTICE—*Doyle* v. *Estornet*, 318.
See EXECUTORY PROCESS—*Riley* v. *Christie*, 256.
See ACTION—*Girard* v. *New Orleans*, 295.
See EVIDENCE—*Blondin* v. *Christophe*, 324.
See EXECUTION—*Rooks* v. *Williams*, 374.
See TUTORS—*Kellar* v. *O'Neal*, 472.
See MORTGAGE—*New Orleans* v. *Holmes*, 504.
See PRINCIPAL AND SURETY—*Love* v. *Voorhies*, 549.
See SALE—*Thompson* v. *Touriac*, 605.
See SLAVES AND STATU LIBERI—*Marshall* v. *Watrigant*, 619.
See INJUNCTION—*Knox* v. *The Coroner*, 88.

JURISDICTION.

1. The District Court has jurisdiction of an appeal from a Justice's Court, in a proceeding under the landlord and tenant law, to expel a contumacious tenant, although the price of the lease is under $10.

D'Armond v. *Pullen*, 137.

2. The District Court may entertain jurisdiction of a suit to set aside a decree of the Supreme Court probating a will, when the existence of the will is denied and sufficient charges of fraud are made by one who was not a party to, nor concluded by the decree sought to be annulled.

De la Croix v. *Gaines*, 177.

3. By the sequestration of the property of a non-resident the court acquires jurisdiction over him. *McDonald* v. *Vaughan*, 405.

4. Jurisdiction by our court over an absentee, by the appointment of a curator

JURISDICTION (*Continued*).

ad hoc to represent him, is only acquired when the subject-matter of the suit, and the nature of the proceeding render such an appointment proper. *Walker* v. *Sanchez*, 505.

5. The curator *ad hoc* cannot, by his pleadings, invest the court with jurisdiction when otherwise the court would have none. *Ibid.*

6. The Fourth District Court of New Orleans has no jurisdiction in matters of succession. *Boyce* v. *Davis*, 554.

See ACTION—*Van Wych* v. *Gaines*, 235.
See PRESCRIPTION—*Barrow* v. *Shields*, 57.
See ATTACHMENT—*Moore* v. *Withenburg*, 22.
See ELECTIONS—*State* v. *Judge*, 89.
See EXECUTION—*Donnell* v. *Parrott*, 251.
See SLAVES—*Marshall* v. *Watrigant*, 619.
See APPEAL—*Curtis* v. *Blackeder*, 592.
See CRIMINAL LAW—*State* v. *Brunetto*, 45.

JURY AND JURORS.

1. A District Judge has no power to summon a jury, at the time fixed by law to hold the regular probate term of the court. *State* v. *Doyall*, 418.

2. The Act approved March, 19th, 1857, entitled "an Act to amend an Act relative to jurors" does not repeal, but merely amends, and reënacts, as as amended, the third section of the Act of 1855, entitled "an Act relative to juries." *State* v. *Soulé*, 478.

See SHERIFF—*Holmes* v. *Dunn*, 153.
See CRIMINAL LAW—*State* v. *Nolan*, 276.
See INSOLVENCY—*Savage* v. *Jeter*, 239.

LAWS.

1. The Legislature has the power to make an exception to the general rule with regard to the promulgation of laws, and to give to an Act full force and effect from the date of its passage. *New Orleans* v. *Holmes*, 504.

LEASE.

1. A tenant has a right to remove the improvements and additions he has made, provided he leaves the property leased in the state in which he found it, but when the additions are made with lime or cement, or the like, the lessor should be notified by the lessee of the intention to remove them, in order that the lessor may exercise his right of retaining them on paying a fair price. *Pellenz* v. *Bullerdieck*, 274.

2. A landlord is not responsible in damages to his lessee, arising from the illegal conduct of an adjoining proprietor, in constructing a privy against the intervening wall, when it appears that the wall, was fit and sufficient for the purpose designed. The Article of the Code applies, when there are vices and defects in the thing leased—he is not bound to guarantee against losses that happen from the nature of the wall, and the illegal conduct of the adjoining proprietor. *Pargoud* v. *Tourné*, 292.

3. When the lease was entered into, the lessor was not obliged to suppose that his neighbor would violate the law, and, therefore, it cannot be considered that a warranty against his illegal, acts formed a tacit condition of the contract of lease. *Ibid.*

LEASE (*Continued*).

4. All that is required of the lessor is to have a wall, staunch and sufficient for the purpose for which it is intended; he is not required to have a wall capable of protecting the lessee against the unlawful acts of the contiguous proprietor. *Ibid.*

See DAMAGES—*Jones* v. *Pereira*, 102.
See JURISDICTION—*D'Armond* v. *Pullen*, 137.
See EVIDENCE—*Ford* v. *Simmons*, 397

LEGACY.

1. The acceptance of a legacy burdened with a *modus* or lawful charge under a will, is itself a contract on the part of the person accepting, obliging him impliedly, at least, to comply with the conditions imposed by the will. *Groves* v. *Nutt*, 117.

See WILLS—*Pena* v. *New Orleans*, 86.
See PRESCRIPTION—*Nolasco* v. *Lurty*, 100.

MALICIOUS PROSECUTION.

1. In an action for damages for a malicious prosecution, it is essential to maintain the action, that both malice and want of probable cause should be shown. *Pellenz* v. *Bullerdieck*, 274.

MANDAMUS.

1. A *mandamus* will not issue to compel a District Judge to grant an order of any kind, in a case where it is apparent that his court is without jurisdiction, *ratione materiæ*. *State* v. *Judge Second Judicial District*, 89.

2. The Supreme Court cannot, in a proceeding by *mandamus*, revise the action of the District Judge. *State* v. *Judge of Second District Court*, 481.

3. When unreasonable delays occur in the District Court, which might work irreparable injury and injustice, the writ of *mandamus* is the proper remedy pointed out by law, to prevent a failure of justice, and compel the inferior court to pronounce judgment upon the demand. *Ibid.*

4. If it appear in the proceeding by *mandamus*, that the District Judge does not refuse to render a judgment upon the petition, it is not in the power of the Supreme Court to compel him to render the particular judgment prayed for by the relator. *Ibid.*

5. A *mandamus* will not be granted to compel the Judge of the lower court to sign a bill of exceptions, when it does not appear that the bill of exceptions had been exhibited to the adverse party previous to its being presented to the court. *State* v. *Judge Second District Court*, 484.

See APPEAL—*State* v. *Fabre*, 279.
See BANKS—*Cockburn* v. *Union Bank*, 289.

MARRIED WOMEN.

1. In a suit to render a married woman personally liable on a note signed by her, with her husband, on the ground that the consideration inured to her separate benefit, the plaintiff has a right to propound interrogatories to the wife on that point, although the amount of property coming to her children ultimately may be affected by her indebtedness or discharge. *Huff* v. *Freeman*, 262.

See COMMUNITY—*Graham* v. *Egan*, 546.
See HUSBAND AND WIFE.

MINORS.

1. Art. 355 of the Civil Code which declares that agreements between the tutor and the minor arrived at the age of majority, shall be null and void, unless entered into after the rendering of a full account, &c., will not enable parties to perpetrate a fraud by repudiating payments made them, in discharge of their tutor's liability. *Chapman* v. *Chapman*, 228.

2. Where a suit is brought by the purchaser of property subject to a mortgage in favor of minors, to fix the amount of the mortgage, the court will not order the sum to be paid over to the tutor of the minor. It must remain in the hands of the purchaser until the liquidation, and final settlement of the tutor's account at the majority or emancipation of the minor, or until the tutor takes legal steps to have the mortgage released. *Massey* v. *Steeg*, 350.

3. A sale made by a minor is not absolutely void. *Wilson* v. *Porter*, 407.

4. An action to set aside a sale made during minority, must be brought by the minor after attaining the age of majority, or by his representatives—such an action being personal to the minor. *Ibid.*

See TUTORS—*Succession of Shaw*, 265.
Succession of Tucker, 464.
See SUCCESSION—*Williams* v. *Hunter*, 476.
See MORTGAGE—*Eagan* v. *Bell*, 508.

MORTGAGE.

1. The defendant being sued as third possessor of property subject to a mortgage for the balance of price of adjudication at a succession sale, set up as an exception that the notes given at the succession sale for the price of the property were not produced—*Held:* That as these notes were not negotiable, but made payable to the legal representatives of the estate, the exception was not properly taken. *Brown* v. *Sadler*, 205.

2. The knowledge of the existence of a mortgage communicated to the purchaser in the act of sale, will bind him without proof of the mortgage being recorded. *Smith* v. *Nettles*, 241.

3. And when such mortgage contained the pact *de non alienando*, the purchaser and third possessor is not entitled to notice of the proceedings to enforce the mortgage. *Ibid.*

4. A clause in the nature of an antichresis in an act of mortgage, does not vitiate the instrument. *Succession of Hickman*, 364.

5. The judicial mortgage resulting from the inscription of a judgment, forms no part of the contract upon which the judgment was rendered. *New Orleans* v. *Holmes*, 504.

6. The tacit mortgage of a minor for an unliquidated amount, upon property, opposes no legal impediment to the seizure and sale of such property, at the instance of a judgment creditor of the owner. *Eagan* v. *Bell*, 508.

7. The failure to reinscribe a mortgage after the lapse of ten years, does not extinguish the mortgage, but destroys the effect of the inscription, and gives a superior rank to those mortgages which have been inscribed since its first registry. *Liddell* v. *Rucker*, 569.

8. The effect of the inscription of mortgages is to prevent third parties from obtaining mortgages superior in rank to those previously registered. *Ibid.*

MORTGAGE, (*Continued*).

9. The meaning of that portion of Article 3333 of Civil Code, which declares that their effect ceases, is not that the effect of the mortgage ceases, but the effect of the inscription. *Ibid.*

10. If no reinscription of a mortgage is made after the lapse of ten years, a party who gives a second mortgage to one, without informing him of the first mortgage which has not been reinscribed, is not guilty of the fraud contemplated, or responsible for the damages allowed by Article 3329 of the Civil Code. *Ibid.*

See SUCCESSION—*Succession of Boyd*, 439.
Succession of Yncgoso, 559.
See HUSBAND AND WIFE—*Belouguet* v, *Landa*, 2.

NEW ORLEANS.

1. *Held:* That the batture outside of Front street is susceptible of private occupation, without injury to the rights of the public upon the banks of the Mississippi River, within the corporate limits of New Orleans. *Yeatman* v. *New Orleans*, 154.

2. In order to entitle the city corporation to exemption from liability for the loss of a slave who was placed in jail for safe keeping, and ran away while employed at work, it is necessary that timely notice should have been given by the city to the owner of the slave. *Clague* v. *New Orleans*, 275.

3. The city is bound to pay her proportion of the expenses necessary for the pavement of streets bordering on ground belonging to the city and laid out for a public promenade. *Marquez* v. *New Orleans*, 319.

4. The division of the batture outside of New Levee street as far as Front street into streets and squares, was not an expropriation of the property so far as the streets were concerned, of which the riparian proprietors had never been in possession. 12 An. 500. *Sarpy* v. *New Orleans*, 349.

5. By the terms of the Act of the Legislature of the 30th April, 1853, (Sess. Acts, p. 298,) the proprietors of batture in the limits of the city of New Orleans, in reducing the batture to private occupation, are bound to leave open to public use, without charge, whatever space may be required by the corporation for public highways or streets. *Ibid.*

See TAXES, &c.—*New Orleans* v. *Jeter*, 509.

NEW TRIAL.

1. Where the jury have not rendered a *distinct* verdict on a claim set up by the defendant in reconvention, the case will be remanded for a new trial. *Collins* v. *Graves*, 95.

2. Where the return to a writ of *certiorari* shows that papers and evidence material to the decision of the cause, had been lost, without neglect on the part of the Clerk, or the parties to the suit, the judgment of the lower court will be reversed, and the case remanded for a new trial. *Wilkinson* v. *Martin*, 479.

3. A new trial will not be granted on the ground of newly discovered evidence, when the party applying for it fails to show in his affidavit, that he had used due diligence to procure or discover the evidence. *Berger* v. *Spalding*, 580.

See CRIMINAL LAW—*State* v. *Brunetto*, 45.

NOVATION.

1. The delegation by which the debtor gives to the creditor another debtor, who obliges himself towards such creditor, does not operate a novation, unless the creditor has expressly declared his intention to discharge his debtor who made the delegation. C. C. 2188.

Choppin v. *Gobbold*, 238.

NOTARY PUBLIC.

1. The plaintiff held a commission as Notary Public in the parish of Orleans, when, on the 12th of March, 1857, the Legislature passed an Act declaring the office of each and every Notary Public appointed previous to the passage of the Act, to be vacated. The same Act provided that the Governor should appoint for the parish of Orleans, not less than forty nor more than sixty Notaries. The Governor having appointed only forty-eight Notaries—*Held:* That by the terms of the Act of the Legislature, the plaintiff, whose commission expired before May, 1857, was *functus officio*, although no one had been specially appointed to take his records.

Cragg v. *Westmore*, 344.

2. A notary is not required to have a particular style of seal to give authenticity to his copies. *Flemming* v. *Richardson*, 414.

OFFICE AND OFFICER.

1. No special legislative enactment is necessary to authorize District Attorneys, either with or without instructions from the Governor, to bring suits to annul patents granted by the State. *State* v. *Smith*, 414.

OVERSEER.

See Cases Affirmed, Overruled, &c.—*Cory* v. *Eldins*, 443.
See Damages—*Boulard* v. *Calhoun*, 445.

PARENT AND CHILD.

1. If a father desires to prefer one child to another in the distribution of his property, he is bound to state his design expressly, by declaring that the gift or legacy is intended "as an advantage or extra portion," or using other equivalent terms. *Montgomery* v. *Chaney*, 207.

2. When there is a price actually paid by the son to the father, in a sale by the latter to the former, and it even exceeds one-fourth of the value of the property sold, but is much below its fair value, and an advantage is thus indirectly sought to be given to one heir over others, the law will compel the heirs to stand on an equal footing. *Ibid.*

3. It will form no bar under such circumstances to an action, to enforce the principle of equality among the heirs, that the property thus sold by the parent to the child, did not exceed the disposable portion unless it appears that the sale was made avowedly as an advantage or extra portion, or such intention is manifested in a subsequent act before a notary and two witnesses. *Ibid.*

PARTITION.

1. A partition of a succession made between an heir of age and minor heirs cannot be opposed by the heir who was of age, and who went into possession of his portion, on the ground of informalities in the proceedings as regards the minor heirs. *Succession of Devereux*, 33.

PARTITION (*Continued*).

2. Such a partition, although not homologated, is binding on the heir of age who signed the act of partition. The decree of the Judge was only necessary to bind the minors. *Ibid.*

3. In the partition of a succession it is not proper, where a part of the heirs have purchased property, to form lots of the notes of the heirs who were purchasers, with the cash, thus compelling the heirs who had not purchased to receive a part in the notes of their co-heirs. In such case the obligations of the heirs purchasing at the sale should be assigned to them. *Succession of Aguillard*, 97.

4. When the mass of the succession to be divided is of such a character, that it cannot be formed into lots without manifest injury to the parties, that formality is not required. *Ibid.*

5. A partition will be set aside where a minor heir is represented by his tutor who is himself a party to the partition. The objection need not have been made by way of opposition before the notary, before whom no contestation could have been made concerning it. *Ibid.*

6. The under-tutor, if he be not interested adversely to the minors, propely represents them all in a partition, where there is no division to be made of the share of the minors *inter se*. *Ibid.*

7. The heirs purchasing at the succession sale are chargeable with the interest stipulated in their notes from maturity, until the day of the formation of the mass of the estate for partition. *Ibid.*

8. The notary must be assisted by experts in making the partition. C. C. 1289. *Ibid.*

9. A partition, even when it takes on itself the aspect and qnality of a compromise, may be attacked for lesion beyond one-fourth, but when the partition is once made and the parties compromise on disputes growing out of it, the compromise is unassailable for lesion. *Williamson* v. *Amilton*, 387.

10. The obligation of warranty, on the part of each of the co-heirs towards the other, in matters of partition, extends to the solvency of the debtors, whose debts may have been partitioned. *Lacour* v. *Lacour*, 463.

See EVIDENCE—*Bach* v. *Ballard*, 487.

PARTNERSHIP.

1. A partnership in a contract for the building of railroads, is an ordinary partnership, and the partners are liable only for their virile shares. *Moores* v. *Bates*, 40.

2. In a suit against an individual partner of a commercial firm, his interest in a particular asset cannot be seized. *Thomas* v. *Lusk*, 277.

3. The partnership effects cannot be seized under an attachment against a non-resident partner, when the domicil of the firm is in New Orleans. *Ibid.*

4. A suit brought against one of the members of a commercial firm, interrupts prescription with regard to all the partners. *Speake* v. *Barrett*, 479.

PARTNERSHIP (*Continued*).

5. Where a note was signed by one of the members of a commercial firm with the addition of the words "in liquidation"—*Held:* That such a note was a notice to the payee that the firm was dissolved, and that without a special authorization to the partner signing the note from his co-partner, the note was not binding on him. *Ibid.*

6. A partner is bound to indemnify his co-partners for any loss to the firm occasioned by an act of his done in violation of the contract of partnership, unless his partners, by their acts or assent, ratify and confirm his acts which occasioned the loss. *Murphy* v. *Crafts*, 519.

7. A partner cannot sue his co-partner, even after the dissolution, for special items advanced to the partnership—his action is for an account and settlement of the partnership affairs, or, if a settlement has been made, for the balance shown to be due to him by such settlement. *Hennegin* v. *Wilcoxon*, 576.

8. Under a special contract to that effect, a commercial partnership will continue after the death of one of the partners, for the purpose of administration and liquidation, if not for all purposes. *Powell* v. *Hopson*, 626.

9. The proceeding by attachment to collect a debt due to the firm, is one of administration only. *Ibid.*

See EVIDENCE—*McLaughlin* v. *Sauve*, 99.
See BILLS AND NOTES—*Robb* v. *Bailey*, 457.

PAYMENT.

1. A transfer of an obligation of a third person in settlement of a debt, is not a compromise, but a *dation en paiement*. *Wright* v. *Temple*, 413.

See PRESCRIPTION—*Nesom* v. *D'Armond*, 294.

PLEADING.

1. The plea of want of service of a petition of intervention, is a dilatory exception, which is waived by pleading to the vagueness and insufficiency of the petition. *Giraud* v. *Mazier*, 147.

2. A party will not be allowed to delay a trial upon the merits of a cause by pleading singly, a variety of technical objections, tending to retard his adversary's action. *McAlpine* v. *Jones*, 409.

3. It is too late for a party to a suit to plead the want of issue joined, upon a petition of intervention, after he has gone into trial without answering it, unless he can show that he was ignorant, before going to trial, of the existence of the intervention in the record. *McCoy* v. *Sanson*, 455.

4. Where the suit was for damages for slander of title to a slave—*Held:* That an amendment of the petition by the plaintiff praying to be decreed to be the owner of the slave, was properly allowed in the decree sustaining an exception to the petition, on the ground that it set forth no cause of action. *Turner* v. *Healy*, 498.

5. The defendant may give in evidence, without amendment of the pleadings, facts which have occurred after issue joined, having a direct bearing upon the matters in controversy, and properly admissible in evidence, the power being reserved to the court to order a continuance or grant a new trial, when the other party is taken by surprise. *Hale* v. *New Orleans*, 499.

PLEADING (*Continued*).

6. An amendment to the pleadings, setting up such new matter, if asked for should be allowed. *Ibid.*

POLICE JURY.

1. The Police Jury of a parish have the power to impose a tax on drinking houses within the limits of an incorporated town in the parish, although the town by its charter is empowered to grant licenses for that purpose.
Benefield v. *Hines*, 420.

2. Where the President of the Police Jury sold at public auction the lease of a ferry for one year, with a privilege for five years, which privilege the purchaser announced at the sale he availed himself of, it was *held*, that the contract was not binding on the parish, because the President had transcended the power given to him by the Police Jury.
DeRussy v. *Davis*, 468.

PRACTICE.

1. The Article 556 of the Code of Practice does not refer to the award of amicable compounders. Where there is no allegation of fraud or other malpractice the homologation of the award of amicable compounders should be made on motion without any delay being granted to the adverse party. *Hart* v. *Stewart*, 37.

2. Where the petition and notes annexed had disappeared from the record, and could not be found after diligent search, the case was properly tried on a copy of the petition filed under an order of court contradictorily rendered.
Moulton v. *Hodges*, 38.

3. A claim by defendant in reconvention for the value of buildings erected by the tenant, being not properly connected with the main action, is not admissible in such a proceeding. *D'Armond* v. *Pullen*, 137.

4. Where a judicial sale is attacked for defects which are relative only, they should be specially alleged and a resulting injury shown, as well as an offer of restitution to be made so far as the plaintiff has been benefited.
Gormley v. *Palmes*, 213.

5. Where the Sheriff had made a second adjudication of property, the first purchaser having failed to comply with the terms of the sale—*Held*: That the first purchaser could not take a rule on the second purchaser to show cause why the second adjudication should not be set aside; he could only proceed by petition and citation.
Converse v. *Steamer Sydonia*, 268.

6. Where the record shows that an answer was filed on the same day that a judgment by default was made final, but no order is shown setting aside the default, it will be presumed that the answer was filed after the default had been confirmed. *Blessey* v. *N. O. Oil Factory*, 310.

7. Where a case is tried upon an exception alone, the allegations in the petition are taken as true, except where evidence has been admitted on the trial, which negatives the truth of those allegations.
Rooks v. *Williams*, 374.

8. When the law, for the purposes of justice, allows, in certain cases, a fictitious citation in the place of a real one, it is necessary that the formalities required to operate the legal fiction be strictly observed.
McDonald v. *Vaughan*, 405.

PRACTICE (*Continued*).

9. A defendant is not bound by a citation served upon an officer under the title of advocate, instead of *curator ad hoc*. *Ibid.*

10. It is not necessary to file an amended petition in reply to, and explanatory of, an amended answer, as the testimony in support of its averments is admissible under the issue presented by the amended answer.
Swilley v. *Low*, 412.

11. Yet such amended petition will be received, and when filed, service thereof upon the defendant is unnecessary. *Ibid.*

12. Amendments should be received whenever required to accomplish the ends of justice. *Ibid.*

13. A call in warranty will not be allowed after the case has been set and called up for trial. *Hyman* v. *Bailey*, 450.

14. It is not necessary to move in open court to have a decree of the Supreme Court recorded in an inferior court, as Article 620 of the Code of Practice, requiring it, is repealed by the Act of 1855, relative to the duties of the Clerks of the District Courts. *Berlin* v. *Gilly*, 461.

15. A party, after having moved for the homologation of a report made by auditors, cannot go behind the same and demand judgment for matters submitted to them, but not allowed by their report.
White v. *Anderson*, 577.

16. When an answer to an intervention, in which the title to property attached is set up, alleges simulation and fraud in such title, and asks that the sale to the intervenor be annulled on these grounds, and no exception is taken to the irregularity of such proceedings, the court will inquire into and examine the questions raised in such answer, and will not reverse a judgment setting aside the sale, on the ground that it should have been attacked directly in a revocatory action, and not collaterally in the attachment suit. *Danjean* v. *Blacketer*, 595.

See APPEAL—*Surgi* v. *New Orleans*, 32.
Marshall v. *Watrigant*, 619.
See NEW TRIAL—*Collins* v. *Graves*, 95.
See BONDS—*Sartorius* v. *Dawson*, 111.
See DAMAGES—*Transit Co.* v. *McCerren*, 214.
See EVIDENCE—*McClure* v. *King*, 141.
See ALIMONY—*Fletcher* v. *Henley*, 150.
See MORTGAGE—*Brown* v. *Sadler*, 205.
See TAXES—*State* v. *McDonnell*, 231.
See SHERIFF—*Holmes* v. *Dunn*, 153.
See GARNISHEE—*Roquest* v. *Clark*. 210.
See MARRIED WOMEN—*Huff* v. *Freeman*, 262.
See ACTION—*Lewis* v. *Labauve*, 382.
See PRESCRIPTION—*Levistones* v. *Marigny*, 353.
See EXECUTION—*Farrell* v. *Klumpp*, 311.
See EXECUTORS—*Castille* v. *Chacere*, 561.
See CURATOR—*Boyce* v. *Davis*, 554.

PRESCRIPTION.

1. A suit instituted upon a note before it is due, has the effect of interrupting prescription so long as the suit lasts after the maturity of the note, even if it be ultimately dismissed upon an exception of prematurity.
Barrow v. *Shields*, 57.

PRESCRIPTION (*Continued*).

2. Defendants, in a chancery suit in the United States Court, were ordered, under a penalty, to file a cross-bill and bring in other parties against whom the complainant had demands, but whom he could not cite before the court, as they were citizens of the State with the complainant. These third parties answered, by denying the jurisdiction of the court, and in case the plea was overruled setting up matters of defence to the complainant's demands. The Supreme Court of the United States decided that the Circuit Court did not obtain jurisdiction over the parties in Louisiana cited in by the defendants, and the proceedings were dismissed. *Held by a majority of the court:* that these proceedings had the effect of interrupting the prescription as to all of the parties who answered the cross-bill within the period of prescription. *Ibid.*

3. An action for the recovery of a legacy is barred by the prescription of ten years. *Nolasco* v. *Lurty*, 100.

4. The plaintiff sued to recover the value of wood cut on his land by the defendants. *Held:* That the action was prescribed as to damages resulting from a trespass, which had been committed more than one year previous to the institution of the suit. *Foley* v. *Bush*, 126.

5. The defects of a title to land resting only on surveys which were unauthorized and illegal, cannot be supplied by prescription. *Melançon* v. *Bringier*, 206.

6. The certificate of purchase under such void surveys would not constitute the basis of prescription as a title translative of property, where the parties whose possession is relied on to make out the plea of prescription, had notice of the defects in the title and of the danger of eviction. *Ibid.*

7. Where an obligation was to be paid in several installments, and all the installments were due when the debtor made a payment without directing on which installment the credit was to be given—*Held:* The payment must be deemed to have been made in part satisfaction of the whole debt, and prescription on all the installments was thereby interrupted. *Nesom* v. *D'Armond*, 294.

8. Prescription against a demand for the recovery of the value of improvements put on land, is suspended while the action for its recovery is pending. *Destrehan* v. *Fazende*, 307.

9. Where defendant was interrogated as to whether he had not promised plaintiff that he would never plead prescription against the notes sued on—*Held:* That as far as the interrogatory referred to a time prior to the acquisition of prescription, defendant could not be compelled to answer, as such an interrogatory is clearly illegal. *Levistones* v. *Marigny*, 353.

10. The interrogatory is not illegal and might properly be answered, so far as it relates to a promise made after the prescription had been acquired. *Ibid.*

11. An acknowledgement by the debtor, after the prescription has been acquired, that he has not paid the debt, would not bind him to pay it, because he could still urge his plea of prescription. *Ibid.*

PRESCRIPTION (*Continued*).

12. The action to compel the executor to render his account is prescribed in ten years from the expiration of his office. *Deranco* v. *Montgomery*, 513.

13. The prescription against such an action by a legatee under the will, is not suspended because the legacy was a conditional one, depending upon the liquidation of the estate to ascertain its amount. *Ibid.*

14. Where a reconventional demand founded on a promissory note was set up, and by a consent judgment the plaintiff's suit was dismissed—*Held:* That it was a voluntary abandonment of the reconventional demand and did not interrupt the prescription on the note.
Elliot v. *Brown*, 579.

15. An admission by a party, that a person holds a note against him, is not of itself an admission that he justly owed to such person the amount of the note; there must be an acknowledgment of the creditors rights. *Ibid.*

16. A promissory note not being payable until after the expiration of the three days of grace, prescription only commences to run from that date.
Kimball v. *Fuller*, 602.

17. The prescription applicable to an action for damages growing out of a fraud practiced in the sale of a horse affected with a contagious and incurable disease, which spread among and caused the death of other horses of the purchaser, is that of one year, under Article 3501 of the Civil Code.
Lutz v. *Forbes*, 609.

See ACCOUNT—*Dixon* v. *Lyons*, 160.
See CORPORATIONS—*Haynes* v. *Wall*, 258.
See SHERIFF—*Hardee* v. *Dunn*, 161.
See SALE JUDICIAL—*Brien* v. *Sargeant*, 198.
See HUSBAND AND WIFE—*Meadows* v. *Dick*, 377.
See CRIMINAL LAW—*State* v. *Jumel*, 399.
See PARTNERSHIP—*Speake* v. *Barrett*, 479.
See WILLS—*Provost* v. *Provost*, 574.
See SERVITUDE—*Delahoussaye* v. *Judice*, 587.
See SALE—*Thompson* v. *Touriac*, 605.

PRINCIPAL AND AGENT.

1. The utmost good faith is exacted in all dealings of an agent touching the interest of his principal—he cannot speculate upon his principal's property, nor take a position where his own interest must necessarily come in competition with that of his principal. *Meeker* v. *York*, 18.

2. An agent undertaking to insure at a particular place goods bought by him, will be relieved from responsibility towards his principal by notifying him at once of the impossibility of obtaining insurance, upon ascertaining the fact. *Williams* v. *Rost*, 327.

3. The principal is responsible in damages for the act of his agent in selling a horse, which he knew to be affected with a contagious and incurable disease that would be likely to be communicated to other stock belonging to the purchaser. *Lutz* v. *Forbes*, 609.

See EXECUTORS—*Succession of Penny*, 94.
See SALE—*Young* v. *Courtney*, 193.
See EVIDENCE—*Rutherford* v. *Hennen*, 336.
See INJUNCTION—*Wilson* v. *Curtis*, 601.

PRINCIPAL AND SURETY.

1. A partial release of the mortgages and privileges of the creditors, releases the surety only *pro tanto.* *Barrow* v. *Shields*, 57.
2. The surety cannot point out for discussion property which once belonged to his principal, and was even mortgaged to secure the original holder of the notes sued on, when such property is no longer in the principal debtor's possession and has passed by successive conveyance into the hands of a third person. *Womack* v. *Fluker*, 196.
3. The surety on an appeal bond cannot be made liable where the Sheriff's return to the writ of *fi. fa.* does not show that a demand was made on both plaintiff and defendant to point out property, the parties being present or represented in the parish. *Levois* v. *Thibodaux*, 264.
4. A surety on a twelve month's bond cannot plead discussion. *Wilkins* v. *Bobo*, 430.
5. Under the Act of March 16th, 1854, a person bound as security upon a twelve month's bond, when he has paid the same, is subrogated to all the rights which the original creditor had at the time the bond was given, or at the time the bond was paid by the security—when the property has been adjudicated to the defendant in the judgment, and he is the principal upon the bond. *Ibid.*
6. When an appearance bond has been duly forfeited, the appearance of the accused at a subsequent term of the court to stand his trial will not liberate the security from his liability. *Guice* v. *Stubbs*, 442.
7. Where the attachment has never been dissolved the surety of a defendant upon a bond given to release the attachment, is bound to pay a personal judgment against the defendant properly rendered in the suit, to the amount of the value of the property attached, notwithstanding there is no express recognition of a privilege upon the property attached, in the final judgment of the court. *Love* v. *Voorhies*, 549.
8. No action can be brought against the security upon an administrator's bond, until the necessary steps have been taken to enforce payment against the principal *Lobit* v. *Castille*, 593.

See TAXES—*State* v. *McDonnell*, 231.
See JUDGMENT—*Dickason* v. *Bell*, 249.
See BONDS—*State* v. *Brown*, 266.
State v. *Schmidt*, 267.
See AUCTIONEER—*St. Louis Church* v. *Bonneval*, 321.

PRIVILEGE.

1. The Act of 1843, p. 44, gives a privilege *for necessary supplies*, furnished to any farm or plantation, on the product of the last crop and the crop at present in the ground. Money advanced cannot be considered as the *necessary supplies of the plantation* in the sense of the statute; although it may be exchanged for necessary supplies, it does not give the commission merchant or any other person who has furnished it a privilege upon the crop in the hands of third persons. It is otherwise as to the crop which has actually been shipped to the commission merchant. *Shaw* v. *Grant*, 52.
2. The payment of the planter's drafts in favor of his laborers and workmen, does not subrogate the party so paying to the privileges of the laborers and workmen. *Ibid.*

PRIVILEGE (*Continued*).

3. The law gives the furnisher of necessary supplies for a plantation a privilege upon the crop *at present in the ground*. But that privilege cannot be extended to a crop yet uncultivated, and towards which nothing has been done. *Ibid.*

4. The vendor of the agricultural products of the United States, in the city of New Orleans, has, under the Act of the Legislature approved March 15th, 1855, a privilege upon such products sold, superior to all others, if exercised within five days after their delivery. *Miltenberger* v. *Hetch*, 528.

5. He may waive this privilege, by stating in his order for the delivery of such produce, that it is to be delivered without vendor's privilege. *Ibid.*

See SUCCESSION—*Succession of Hunter*, 257.
See CASES AFFIRMED, &c.—*Cory* v. *Eddins*, 443.
See RES JUDICATA—*Wilson* v *Curtis*, 601.

PUBLIC LANDS.

1. Where the United States has parted with its title by a patent legally issued, and upon surveys legally made by itself, and approved by the proper department, the title so granted cannot be impaired by any subsequent survey which the Government may make for its own purposes. *Cage* v. *Danks*, 128.

2. In presenting an appeal to the District Court from the decision of the Register of the State Land Office, under the Act of the Legislature of 1853, it is not necessary there should be an order of appeal made, and an appeal bond filed. *Keller* v. *Loflin*, 185.

3. The Register, after granting a certificate of entry upon the location of a warrant, has the power to determine whether such location has not been made in violation of a settlement right. *Ibid.*

4. The Acts of 1853 and 1857, which give an appeal from the decision of the Register of the State Land Office, require that the appellant should make a special assignment of errors, upon which he relies for a reversal of the decision. *Ibid.*

5. The title of the United States to the selections of land made by the State of Louisiana, under the Act of Congress, approved September 4th, 1841, passed out of the government, and vested in the State of Louisiana at the time of the final approval of the selections by the Secretary of the Interior, unless there had been some legal claim to them at the time, obtained from the General Goverment which prevented the acquisition by the State. Claims to these selections must be established by certified copies and other legal evidence, and the unconditional selection of lands under the Act, and the approval of them by the Departments at Washington, is superior in proof to any recital contained in subsequent letters of the Commissioner of the General Land Office to the Register and Receiver—and to any report made by the Register and Receiver, to the Commissioner favorable to the rights of those claiming these selections under the General Government. *Wiggins* v. *Guier*, 356.

6. Although the action of the General Land Office is generally conclusive upon the subject of the grant of public lands, up to the issuing of the patents or other divestiture of title, it could not by its subsequent action upon a fictitious claim defeat rights already vested. *Ibid.*

PUBLIC LANDS (*Continued*).

7. The bare fact that an inconsiderable portion of a settlement, or clearing, happens to extend into a section of swamp and overflowed land, when the main body of the settlement, including the settler's dwelling, is upon land never donated to the State by the United States,—does not authorize the settler to claim the swamp and overflowed section by right of preëmption under our State laws. *Robertson* v. *Mershon*, 373.

8. Prior to the passage of the Acts of the 16th of March, 28th of April, 1853, and 17th of March, 1852, there were no provisions in our law with regard to settlers claiming preëmption rights to the lands donated by the general government to the State, under the Acts of Congress of March 2d, 1849, and September 28th, 1850; the State, therefore, at that time had control over these lands, subjected only to the conditions of the grant. *Beridon* v. *Barbin*, 458.

9. The Act of Congress of the 29th of May, 1830, declares "all assignments and transfers of rights of preëmption in public lands, prior to the issuance of a patent, to be null and void." *Stanbrough* v. *Wilson*, 494.

10. An amendment of that Act in 1832, only authorizes such assignment or transfer, after certificates of payment or final receipts for the price of such preëmption, from the land office. Statutes at Large, 4, pp. 423 and 496. *Held:* That the provisions of these statutes are imperative, and that a probate sale of the preëmption right, ordered for the purpose of paying debts of the succession, when no payment of the government price of the land had been affected, was the sale of a thing inalienable. *Ibid.*

11. In an action by the widow and heirs of the preëmptor, against one deriving title from the purchaser at the probate sale—*Held:* That the land having been paid out of the land office in their name, and a patent issued in their name, they were entitled to recover, but not without reimbursing to the defendant the money which had gone to the benefit of the estate by the supposed sale. *Ibid.*

12. The claim of the defendant for his improvements on the land was also allowed. *Ibid.*

13. A transferee of a preëmption claim to a quarter section of land belonging to the United States, unsurveyed and undefined, except that his transferor in the deed locates it in a certain township, giving him no limits, can have no civil or constructive possession under such a transfer; he possesses inch by inch only so far as he cultivates and encloses. *Millard* v. *Richard*, 572.

14. Where the proper officers of the land department have ordered the survey of a confirmed grant, after holding up the claim for many years, on the ground of a suspicion of its being fraudulent and forged, such objection to the title cannot be raised afterwards by an adverse claimant. *Tucker* v. *Burris*, 614.

15. It is not necessary to trace such a title to the original claimant; if it is traced to the confirmee, whose existence is not contested, it suffices. *Ibid.*

16. Before patents are issued for public lands, the judgment in a suit between parties involving the validity of their respective confirmations, can only

PUBLIC LANDS (*Continued*).

maintain the party in whose favor the judgment is rendered, in provisional possession of the land in dispute. *Sandoz* v. *Ozenne*, 616.

See PRESCRIPTION—*Melancon* v. *Bringier*, 296.
See WARRANTY—*Butler* v. *Watts*, 390.
See SALE—*McLeroy* v. *Duckworth*, 410.
See BOUNDARY—*Sandoz* v. *Ozenne*, 616.

PUBLIC SCHOOLS.

1. When a warrant is drawn by those who are *de facto* directors of the public school of a particular district, the treasurer, upon whom it is drawn, cannot set up as a defence that the directors were not elected, and had not qualified as directors. *Miahle* v. *Fournet*, 607.

2. The eleventh section of the Act of the Legislature, organizing free public schools, which requires that the warrant drawn for the salary of any teacher should be accompanied by a statement of the number of children taught, &c., is directory, and was not intended to be a necessary adjunct of the warrant, without which it could not be paid. *Ibid.*

3. The exaction of extra compensation by the teacher, from the parents of children, is a good ground of complaint to the directors, but does not constitute a defence to the payment of the warrant drawn by them. *Ibid.*

RECONVENTIONAL DEMAND.

See NEW TRIAL—*Collins* v. *Graves*, 95.
See JURISDICTION—*D'Armond* v. *Pullen*, 137.
See JUDGMENT—*McFarland* v. *White*, 394.

REDHIBITION.

1. When in a redhibitory action, it was shown that the slave died of a chronic diarrhœa—*Held:* That the apparent illness of the slave at the time of the sale, without any declaration by the vendor, of the nature of the illness, did not bring the case within the meaning of Art. 2497 of the Code, as to apparent defects. *Alexander* v. *Hundley*, 327.

2. In a redhibitory action, where there is no presumption raised by reason of the time when the disease manifested itself, the burden of proving its existence at the date of the sale rests upon the plaintiff in the action. *Mackie* v. *Davis*, 475.

REGISTRY.

1. The registry of a Sheriff's deed in the book of mortgages, does not convey the information required by the statute; unless recorded in the book of conveyances, the property is liable to seizure. *Colomer* v. *Morgan*, 202.

See SIMULATION—*Connery* v. *Clark*, 313.
See WARRANTY—*Clark* v. *O'Neal*, 381.
See CONSTITUTIONAL LAW—*New Orleans* v. *Holmes*, 502.
See SUCCESSION—*Succession of Yznguso*, 559.
See MORTGAGE—*Liddell* v. *Rucker*, 569.

RES JUDICATA.

1. The plaintiff, as trustee of the Agricultural Bank of Mississippi, under an appointment made by the court in Mississippi, which declared the forfeiture of

RES JUDICATA (*Continued*).

the charter of the bank, obtained judgments, first in Mississippi against the defendant *Routh*, on which, judgments were afterwards rendered against him in Louisiana, in favor of the trustees. *Held:* That on the trial of the issue as to the right of property sought to be subjected to the payment of such judgments, neither the defendant nor those claiming to have derived title under him, could contest the capacity of the trustee, that being *res judicata* as to the original defendant, and the other parties having no interest therein. *Peale* v. *Routh*, 254.

2. Where the title to property, seized by the creditors of the vendor, was decreed to be fraudulent and simulated, in a suit to which the vendee was a party—*Held:* That such judgment is *res judicata*, as to the vendee's claim to the title, but not as to his other claims upon the property; and if he have any privilege or right to claim any portion of the price, he should have an opportunity of showing it. *Wilson* v. *Curtis*, 601.

3. *Held*, also, that he was not entitled to enjoin the sale of the property, but his privileges should have been enforced upon the proceeds of the sale. *Ibid.*

RULE.

See SUPREME COURT—*State* v. *Judge*, 485.

SALE.

1. The buyer has not the right to suspend payment of the price, under Art. 2535 of the Code, where he has made a sale of the land by the same description and for the same price, without warranty against the disturbance which is made the ground for resisting payment, and which was specially mentioned in the conveyance to his vendee. *Bertaud* v. *Blouin*, 145.

2. The true construction of Art. 2419 of the Civil Code is, that the party attacking a sale as being a disguised donation must prove, either that there was no consideration paid, or that the price paid was *less than the one-fourth* of the real value of the property pretended to be sold. *Laycock* v. *Bird*, 173.

3. In August, 1810, *B. F.*, by a power of attorney, authorized *W. S.* to collect the purchase money of a tract of land which he had previously sold. A description of the land was given, and the attorney was also authorized to ratify the sale. Under his authority, he ratified the sale and collected the unpaid purchase money.—*Held:* That after so great a length of time, the sale and ratification must be considered as conclusive on those plaintiffs who claim under *B. F.* *Young* v. *Courtney*, 193.

4. In the absence of all proof of fraud, good faith in the transactions of parties will be presumed after great length of time. *Ibid.*

5. The defendant having admitted, in answer to interrogatories, that a sale made to him by the Sheriff of a slave sold under execution, as the property of the plaintiff, was subject to a *right of redemption* on the part of the plaintiff, it was held that the Art. 2255 of the Code which requires an actual delivery of the property when a verbal sale is relied on, was not applicable to such a case. *Boone* v. *Pelichet*, 203.

6. It was not necessary the plaintiff should exhibit the money to put the defendant *in mora*, as he had refused to make the reconveyance. *Ibid.*

SALE (*Continued*).

7. When an executrix caused certain property to be inventoried and sold, as belonging to the succession she was administering—*Held:* That the heirs of the executrix were estopped from denying that fact.
Mardis v. *Mardis*, 236.

8. Purchasers in good faith will be protected by the order of court for the sale of the property, against any claim on the part of the heirs of the executrix.
Ibid.

9. A deed of sale purporting to convey *only the right, title and interest* of defendant in execution, conveys, by such description, the property itself.
Durell v. *New Orleans*, 335.

10. A mere promise to sell when certain conditions are complied with, does not confer a title, but only creates an obligation which may be enforced by an action to compel a specific performance, or for the recovery of damages.
Knox v. *Payne*, 361.

11. Where a person in selling his tract of land sells also his "entire interest" in all improvements upon public land adjacent to said tract, he makes to his vendee only a *quit claim* of his interest in said improvements.
McLeroy v. *Duckworth*, 410.

12. A party must allege and prove some disturbance, or danger of eviction even to require security from his vendor, and much more to stay an order of seizure and rescind the sale. *Davis* v. *Jelks*, 432.

13. When a party after the sale perfects the title conveyed to him, he is only entitled to receive from his vendor a credit upon the price paid him, to the amount which it cost him to perfect his title. *Ibid.*

14. An action of lesion, as between the parties to the contract of sale, is not peremptorily destroyed by an anterior sale, which has never come in conflict with the title acquired by the vendee. *Snoddy* v. *Brashear*, 469.

15. Without a technical *contestatio litis* existing at the time of a sale, the acts of the parties may be such as to estop them, from denying that the right purchased was a litigious right. *Billiot* v. *Robinson*, 529.

16. A tender made to the attorney of a party is sufficient. *Ibid.*

17. Where a sale was made to three persons, and to the survivor of them, and two of the vendees having died, the survivor claimed the ownership—*Held*: That there being no forced heirs of the deceased owners, and no creditors having an adverse interest, the title vested in the survivor.
Pope v. *Anderson*, 538.

18. When a party sells the right of way across a tract of land which is mortgaged, the vendee has a right to demand security from eviction, before paying the price agreed on. *Liddell* v. *Rucker*, 569.

19. When a party purchases property from an absconding debtor, it is presumed that he must have known that his vendor's object in selling his property was to deprive his creditors of their recourse upon it.
Danjean v. *Blacketer*, 595.

20. A sale made under such circumstances is fraudulent, and subsequent payments made by the purchaser cannot cure the defects of his title.
Ibid.

SALE (*Continued*).

21. Where a slave was sold, on the condition that the purchaser should emancipate her *as soon as it could be done—Held:* That the Act of the Legislature of 1857, prohibiting the emancipation of slaves in this State, renders the fulfillment of the condition impossible, while that Act remains in force. *Julienne* v. *Touriac*, 599.

22. The vendor of a slave is not entitled to rescission of the sale, on the ground that the vendee had not fulfilled the condition of emancipating the slave as soon as it could be done, if during the time that it was possible the emancipation could have been legally effected, the vendee was not put in default, and by subsequent legislation the emancipation within the State became impossible. *Thompson* v. *Touriac*, 605.

23. The vendee could not change the nature and origin of his possession, so as to acquire a title by prescription, and if it became afterwards legally possible to effect the emancipation the contract would be binding, and, therefore, the judgment of the court below should have been one of nonsuit. *Ibid.*

See PARENT AND CHILD—*Montgomery* v. *Chaney*, 207.
See WARRANTY—*Lanata* v. *O'Brien*, 229.
Clark v. *O'Neal*, 381.
See ACTION—*Woods* v. *Woods*, 189.
See MORTGAGES—*Smith* v. *Nettles*, 241.
See SUCCESSION—*Lewis* v. *Labauve*, 382.
See MINORS—*Wilson* v. *Porter*, 407.
See EVIDENCE—*Harper* v. *Pierce*, 340.
See EXECUTORS—*Collins* v. *Hollier*, 585.
See TUTORS—*Hollier* v. *Gonor*, 591.

SALE JUDICIAL.

1. The presumption, which has been applied for the purpose of quieting titles in the interest of parties in possession under a Sheriff's sale for a long period of time, that the formalities for effecting the sale had been complied with, will not be applied for the purpose of disturbing possession. *Landreaux* v. *Foley*, 114.

2. A Sheriff's sale is radically null, where the land conveyed by the Sheriff, does not correspond with the order of seizure either in quantity or boundary. *Ibid.*

3. A purchaser at public sale who shows a judgment, execution and Sheriff's deed in the usual form, has an apparently just title, under which to prescribe, notwithstanding informalities in the sale unknown to him, if he possesses long enough under such title before the informalities are declared by suit to set aside the sale. *Brien* v. *Sargent*, 198.

4. Where the Sheriff's return and the deed of sale made by him to the purchaser of property at a Sheriff's sale, set forth that notice of seizure was served on the parties, the burden of proof rests on the party attacking the sale, to show the falsity of such recitals, although it involves the proof of a negative. *Morse* v. *McCall*, 215.

5. It is not necessary, in executing an order of seizure and sale, that a demand of payment should be made by the Sheriff. *Ibid.*

SALE JUDICIAL (*Continued*).

6. The Sheriff's return was in these words "I seized and advertised the within described property to be sold on the 15th March, 1845, but the same could not be sold, it having been stopped by plaintiff's order, and again I seized and advertised the property for the 24th June, 1845."—*Held:* That without other evidence, it could not be inferred from those expressions that there was an actual release of the seizure, and that a sale made by the Sheriff after the return day of the writ, was valid, the original seizure remaining in force. *Ibid.*

7. A change in the terms of the sale, if more favorable to the seized debtor than in the first advertisement of the sale, would not invalidate it, and would be presumed to have been done at the instance of the debtor. *Ibid.*

8. Parol evidence is admissible to show the acts of the party, or his agent, which would estop him from contesting the validity of such a sale. *Ibid.*

9. The purchaser at a judicial sale acquires such a vested right to the property by the adjudication, that it cannot be taken from him unless he refuses to comply with the terms of the sale. *Washburn* v. *Green*, 332.

10. But if the purchaser refuses to comply with the terms, he is considered as never having been owner, saving to the vendor his right to compel a specific performance of the contract. *Ibid.*

11. Where that refusal to comply is recognized by a final judgment ordering the property to be re-sold at the risk of the purchaser, it is a complete divestiture of any right under the first adjudication, and this effect will be produced even if the purchaser be a mortgage or privilege creditor of the succession. *Ibid.*

See ACTION—*Woods* v. *Woods*, 189.
See PRACTICE—*Gormley* v. *Palmer*, 213.
Converse v. *Steamer Sydonia*, 268.
See EVIDENCE—*Hyman* v. *Bailey*, 450.
Lanfear v. *Harper*, 548.

SEPARATION FROM BED AND BOARD.

See HUSBAND AND WIFE—*Muller* v. *Hilton*, 1.
Thomas v. *Tullieu*, 127.

SEIZURE AND SALE.

See SALE JUDICIAL.
See MORTGAGE—*Eagan* v. *Bell*, 508.

SEQUESTRATION.

1. Where a party sequesters a slave, on the ground that she has an hypothecary right upon such slave, and believes that the slave is about to be carried out of the State—*Held:* That the sequestration will be set aside if the affidavit does not set forth the amount of the mortgage, and affiant does not therein aver positively, that she has grounds to suppose that the slave is about to be carried out of the State. *Johnston* v. *Cammack*, 594.

See COURTS—*Collins* v. *Edwards*, 342.

SERVITUDE.

1. Where the owner of the lots on both sides of a division wall makes an opening or window in the wall, it is an act constituting the "*destination*

SERVITUDE (*Continued*).

du père de famille," and is equivalent to a title creating a servitude, as soon as a division of the ownership of the property takes place.
Lavillebeuvre v. *Cosgrove*, 323.

2. The erection of works contrary to the servitude would not have the effect of extinguishing it, unless the owner of the estate to which the servitude was due had given an express permission, or consent to the erection of such works either verbally or in writing. *Ibid.*

3. When a servitude is due by an estate below to receive the waters of the estate above, the proprietor below is not at liberty to raise any dam, or to make any other work to prevent the running of the water, and the proprietor above can do nothing whereby the natural servitude due by the estate below may be made more burdensome.
Delahoussaye v. *Judice*, 587.

4. To acquire the right to a continuous and apparent servitude by prescription, the enjoyment of it must be absolute and uninterrupted during ten years, and not dependent only upon a precarious permission from the debtor.
Ibid.

5. Where the creditor of the servitude, to stifle the complaints of the debtor and prevent a lawsuit, himself erects works totally obstructing the servitude, at the request of, and by agreement with the debtor—*Held:* that he thereby makes a tacit renunciation of the servitude. *Ibid.*

SHERIFF.

1. In a proceeding to render the Sheriff liable for failing to return a writ of *fieri facias* before the return day, to which the sureties were made parties, the court properly allowed a trial by jury. *Holmes* v. *Dunn*, 153.

2. The insolvency of the defendant in execution, of itself, will not exonerate the Sheriff from liability under the statute. *Ibid.*

3. A Sheriff and his sureties are liable for money collected by the Sheriff, on a twelve months bond which he had taken for goods sold by him officially.
Hardee v. *Dunn*, 161.

4. Prescription commences to run only from the time when the right of action accrued. *Ibid.*

5. The burden of proof is upon the Sheriff and his sureties, to show what the former has done with money he has collected in his official capacity.
Ibid.

6. A Sheriff cannot be made responsible in damages for executing a judgment conferring a privilege on a certain object, by the seizure and sale of the object. The judgment and mandate in the suit are his authority.
Ellmore v. *Hufty*, 227.

7. A Sheriff cannot be held responsible for property seized by his predecessor in office, without proof that the property so seized had come into his possession, or that he had bound himself in some way for its production.
Ballew v. *Robb*, 375.

8. The Sheriff is not authorized to seize property in another parish, even when pointed out by the debtor. *Dinkgrave* v. *Sloan*, 393.

SHERIFF (*Continued*).

9. In pointing out property to a Sheriff to seize, it is sufficient to inform him where the property is. *Marshall* v. *Simpson*, 437.

10. A bare suspicion that there might be some difficulty with regard to the title to property pointed out, does not justify the Sheriff in refusing to seize—his neglect to seize is at his own peril. *Ibid.*

11. Where a party has suffered from the neglect of the Sheriff to make the seizure, he is only entitled to recover from the Sheriff and his sureties, the exact amount he would have received, if the Sheriff had done his duty. *Ibid.*

12. The first section of the statute of 1855, which provides a summary remedy in favor of the plaintiff in an execution against the Sheriff for a failure to return the writ on or before the return day, was not repealed by the Act passed on the same day, which treats of the duties of Sheriffs, etc., and provides for the protection of any person who sustains damages in consequence of the failure of the officer to return the writ on the return day. *Waldo* v. *Bell*, 329.

See INSOLVENCY—*Savage* v. *Jeter*, 239.
See CRIMINAL LAW—*State* v. *Oscar*, 297.
See SUPREME COURT—*Lewis* v. *Labauve*, 382.

SIMULATION.

1. Under a charge of simulation as well as fraud, all the facts and surrounding circumstances attending the trasaction, may be proved by parol evidence. *Montgomery* v. *Chaney*, 207.

2. A seizure made under a judgment against a simulated purchaser of a steamboat, the creditor being aware of the simulation, will not have a preference over attaching creditors who proceed against the real owner of the boat. *Conery* v. *Clark*, 313.

3. A party who suffers a boat to be registered in his name, and thus holds himself out to the world as a real owner, cannot claim as regards the debts of the boat to be in any better position, than if he was the real owner. *Ibid.*

See EVIDENCE—*Hyman* v. *Baily*, 450.

SLAVES AND STATU LIBERI.

1. The Act of the Legislature of the 25th of March, 1840, which imposes a a fine of $500 on the captain and owners of a boat, when a slave is found aboard without a written permission of the owner, does not make it necessary there should be a conviction in a criminal prosecution to entitle the owner to recover the fine. *Marciacq* v. *Wright*, 27.

2. A guilty intention is a necessary element in ascertaining whether the penalty under the statute has been incurred, and although the fact of the slave having been found aboard without such permission of his owner, is presumptive evidence of the guilty intention of depriving his master of him, and of transporting him out of the State, or from one part of the State to the other, yet such presumption may be rebutted by other evidence. *Ibid.*

3. The Article of the Constitution of the United States which provides for the delivery of fugitive slaves to the owner, does not apply to the case of a

SLAVES AND STATU LIBERI (*Continued*).

runaway slave who is arrested in another State, confined in jail, and after advertisement for a reasonable time to notify the owner, sold at public auction for his benefit. *Landry* v. *Klopman*, 345.

4. The laws of the slave States on that subject are matters of police essential to the protection of their citizens, and are designed also for the protection of the owner himself. *Ibid.*

5. A sworn copy of a commitment annexed to the deposition of the witness who examined it, and who had the custody of the same, is admissible in evidence. *Ibid.*

6. The 32d section of the Act of 1806, called the Black Code, justifies the firing upon runaway slaves who are armed, or who, when pursued, refuse to surrender, avoiding however, if possible, the killing of them. *Laperouse* v. *Rice*, 567.

7. If, however, the slave be killed, the homicide is a consequence of the permission to fire upon him, and the party killing him cannot be held liable for the value of the slave killed. *Ibid.*

8. A person to whom a *statu liber* owes service, has the right, on moving from one State to another, to take such *statu liber* with him, and thus change the domicil of the *statu liber*. *Marshall* v. *Watrigant*, 619.

9. The *status* of a slave, or *statu liber*, is governed by the law of his domicil. *Ibid.*

10. Where a *statu libera* domiciliated with the person to whom she owed service in Louisiana, fled from such service to the State of Kentucky, from whence she had been removed while a *statu libera*, and there obtained a judgment in a court of Kentucky (by whom counsel was appointed to represent the absent defendant) against her owner in Louisiana, recognizing her right to her freedom—*Held:* That in a suit afterwards brought by her, on her return to Louisiana, against the owner from whom she had fled, the judgment so obtained would not be recognized as binding on the defendant. The domicil of both plaintiff and defendant being in Louisiana, the courts in Kentucky could not assume jurisdiction over the *status* of plaintiff, nor render a judgment binding on defendant, without notice to him. *Ibid.*

11. Since the Act of the Legislature of 1857, prohibiting the emancipation of slaves in Louisiana, the right of a *statu liber* to freedom cannot be recognized. *Ibid.*

See EMANCIPATION—*Delphine* v. *Guillet*, 248.
See EVIDENCE—*Ford* v. *Simmons*, 397.
See ACTION—*Lusk* v. *Church*, 360.
See CRIMINAL LAW—*State* v. *Oscar*, 297.
See APPEAL—*Jones* v. *State*, 406.
See JUDGMENT—*Chaffe* v. *St. Charles*, 415.
See DAMAGES—*Boulard* v. *Calhoun*, 445.

STATUTES.

1. The former is a substantial reënactment of a statute which had been in force for many years and had undergone frequent judicial exposition. which could not have been unknown to the Legislature of 1855, when they were redacing the previous legislation to a more complete system,

STATUTES (*Continued*).

The latter contains provisions of a more general nature, and affords a remedy to a larger class of persons. They should be so construed as to give effect to both. *Ibid.*

2. The language of a penal statute is not to be stretched by construction beyond its natural meaning. *State* v. *Whetstone*, 376.

3. Statutes of a general nature do not repeal particular statutes enacted for the benefit and relief of individuals. *Béridon* v. *Barbin*, 458.

4. When a statue punishing an offence has been repealed without any saving clause, as to prosecutions already commenced, it operates as a pardon to persons convicted under such repealed statute. *State* v. *O'Conner*, 486.

5. It is the duty of the court, *ex officio*, to notice the repeal of laws. *Ibid.*

See SLAVES—*Marciacq* v. *Wright*, 27.
See ELECTIONS—*State* v. *Judge*, 89.
See DONATIONS—*Wood* v. *Stokes*, 143.
See ACTION—*Giraud* v. *Marier*, 147.
See JURY—*State* v. *Soule*, 478.
See NOTARY PUBLIC—*Cragg* v. *Westmore*, 344.
See CRIMINAL LAW—*State* v. *White*, 573.
See SHERIFF—*Waldo* v. *Bell*, 329.
See TAXES—*State* v. *Southern Steamship Company*, 497.

SUBROGATION.

1. The Articles of the Code relative to payment with subrogation, do not apply to the case of an absolute transfer of a debt which includes its accessories, such as privileges and mortgages. *Oakey* v. *Sheriff*, 273.

2. When a party agrees to subrogate another to his rights against his debtor, upon his paying certain specific balances, in yearly installments, which are admitted to be due upon promissory notes, bearing interest, and which constitute the debts to the rights of which he seeks to be subrogated, and when there is no release or remission of interest expressed in, or that can be implied from the agreement—*Held:* That the party assuming the payment of the balances due upon the obligations, cannot be subrogated to the rights of the holder of the notes, until he has paid the interest which has accrued and is due on them. *Soulié* v. *Brown*, 521.

3. The assumption to pay a subsisting obligation, from which interest grows, necessarily implies the payment of such interest, although not stipulated "*eo nomine.*" *Ibid.*

See PRIVILEGE—*Shaw* v. *Grant*, 52.

SUCCESSION.

1. The universal legatee having seizin of the property of a succession, is not accountable for the revenues of a particular legacy before delivery, or a demand of delivery, made of him in due form by the particular legatee. C. C. 1619. *Succession of Fletcher*, 29.

2. The mother of a natural child, deceased without posterity, is entitled to the inheritance, to the exclusion of natural brothers and sisters. *Nolasco* v. *Lurty*, 100.

SUCCESSION (*Continued*).

3. When a curator's account is homologated only in "so far as not opposed," the heirs are not concluded as to items in the account to which opposition was filed by creditors. *Succession of Schaffer*, 113.

4. The legal usufruct spoken of in Art. 553 of the Civil Code, is that referred to in Articles 239, 240 and 241, and does not embrace the *marital portion*; as usufructuary, the surviving spouse is bound to give security to the heirs for the marital portion. *Conner* v. *Conner*, 157.

5. The advantage which a father bestows on his son, though in any other manner than by donation or legacy, is subject to collation. *Laycock* v. *Bird*, 173.

6. The husband cannot, by testamentary disposition, defeat the effect of the Act of 1852, "to provide a homestead for the widow and children of deceased persons." *Succession of Hunter*, 257.

7. The claim of the widow is a privileged debt. *Ibid.*

8. When there are no descendants of the husband, the amount due to the widow is received by her in full property, and she is not bound to give security. *Ibid.*

9. The attorney for absent heirs has a right to claim for the benefit of the heirs the twenty per cent. interest, as a penalty incurred by the curator for the improper withdrawal of the funds of the estate from the bank. *Succession of Thompson*, 263.

10. The tax of ten per cent. required by the Act of March, 1855, sec. 7, to be paid by every heir, legatee or donee, domiciliated in a foreign country, upon all sums of money, or on the value of all property which he may have received from the succession of any person deceased, in this State, is not a debt due by the succession, but is simply a debt due by the heir who happens to reside in a foreign country. *Succession of Pargoud*, 367.

11. Foreign heirs have also a right to accept a succession purely and simply, and to take possession of the property without interference by the State, unless there is an averment that they intend to remove the property to defraud the State. *Ibid.*

12. A suit to recover this tax should be brought directly against the heirs who, under the statute, owe it to the State. *Ibid.*

13. Where a general allegation is made in a petition for letters of administration to the effect, that there is considerable property belonging to the estate—*Held:* That such an allegation cannot estop the party making it, further than it is shown to embrace certain specific property, to which it was designed to apply. *Martin* v. *Boler*, 369.

14. An allegation of such a general character cannot bind the widow, the heir, or creditor, to an admission of title to whatever should afterwards be embraced in the inventory. *Ibid.*

15. When a sale of succession property is ordered to be made on the petition of the administrator on a credit of twelve months, for the purpose of paying debts, it is not necessary the property should bring the appraisement. *Lewis* v. *Labauve*, 382.

SUCCESSION (*Continued*).

16. A probate sale has the effect of extinguishing all mortgages on the property, given by the deceased. *Ibid.*

17. A creditor of an estate, whose debt operates as a judicial mortgage, and is in a twelve month's bond executed by the deceased, cannot cause the property of the succession to be sold for cash, without the benefit of appraisement, to satisfy his claim. *Succession of Boyd*, 439.

18. The seizure and sale, under a *fi. fa.*, of succession property, without an order of court or other legal authority, is illegal; and the rights of minors cannot be divested by such a sale. *Williams* v. *Hunter*, 476.

19. A reinscription of a mortgage upon property belonging to a succession, is unnecessary after such property has been sold and reduced to possession. *Succession of Ynogoso*, 559.

20. The sale of succession property extinguishes the mortgages upon it, and the proceeds of the sale are held in trust by the administrator, to be distributed among the creditors according to the rights of priority, which existed among them, upon the property itself before it was sold. *Ibid.*

See EXECUTORS—*Succession of Penny*, 94.
See PARTITION—*Succession of Devereux*, 33.
Succession of Aguillard, 97.
See CONSTITUTIONAL LAW—*Succession of Schaffer*, 113.
See PUBLIC LANDS—*Stanbrough* v. *Wilson*, 494.
See JURISDICTION—*Boyce* v. *Davis*, 554.
See SUCCESSION—*Brown* v. *Sadler*, 205.

SUPREME COURT.

1. Where the damages allowed by a jury are excessive, they will be reduced in the Supreme Court. *Jones* v. *Pereira*, 102.

2. Where vindictive damages are allowed in the court below, if they are extravagant, they will be reduced in the Supreme Court to such an amount, as is considered by them sufficient under all the circumstances of the case. *Fitzgerald* v. *Boulat*, 116.

3. A case which has been submitted for decision to the Supreme Court is not subject to any control by the Legislature. *Lanier* v. *Gallatas*, 175.

4. A party cannot, by claiming what he is evidently not entitled to, invest the Supreme Court with jurisdiction of an amount under three hundred dollars. *Rutherford* v. *Hennen*, 336.

5. Where evidence is certified by the Clerk, or a statement of facts is made out by the District Judge, the Supreme Court does not examine the same as a Court of Error, but reviews and weighs the evidence and gives effect to that which preponderates, precisely as the jury or the District Judge ought to have done. *Wiggins* v. *Guier*, 356.

6. Where parties desire it, the court will in a proper case, find the facts in such a manner that the questions of law can be fairly raised for the consideration of the Supreme Court of the United States. *Ibid.*

7. The Supreme Court will not remand a case in order to allow the Sheriff to amend the *proces verbal* of a sale, where no effort was made in the lower court to procure such amendment. *Lewis* v. *Labauve*, 382.

SUPREME COURT (*Continued*).

8. A rule taken in the Supreme Court against a District Judge, to compel him to show cause why he should not furnish a statement of facts to be used in a suit on appeal, will be dismissed, unless it is shown that the suit is within the appellate jurisdiction of the court; this will not be inferred from the fact that the District Judge had granted the appeal.
State v. *Judge 2d District Court*, 485.

9. A bill of exceptions to the rejection of evidence in the court below will not be noticed in the Supreme Court, unless it contains the grounds upon which the testimony was rejected. *Hale* v. *New Orleans*, 499.

10. It is the duty of the Supreme Court to notice, *ex officio*, irregularities in the proceedings of the court below. *Déjean* v. *Stilly*, 565.

11. Where no bill of exceptions has been taken to the ruling of the Judge in refusing to grant a continuance, the Supreme Court will not notice such refusal. *Berger* v. *Spalding*, 580.

See APPEAL—*Lanier* v. *Gallatas*, 175.
See CRIMINAL LAW—*State* v. *Peter*, 232.
State v. *Oscar*, 297.
See MANDAMUS—*State* v. *Judge*, 481.
See WARRANTY—*Long* v. *Barnes*, 392.

SURETY.

See PRINCIPAL AND SURETY.

TAXES, TAXATION, TAX COLLECTOR AND TAX SALES.

1. The Legislature, besides levying taxes for the support of the State Government, may delegate to the several parishes and municipal corporations of the State, a similar power of taxation for the support of a local government and police within their respective limits.
New Orleans v. *Turpin*, 56.

2. There is no constitutional or legal provision inhibiting the taxation of the profession, calling or business of an auctioneer. *Ibid.*

3. The license granted to auctioneers by the Auditor of Public Accounts, and their *quasi* official character involve no contract exempting them from taxation. *Ibid.*

4. The power of taxing such a calling having been delegated to the city may be exercised by it, although the State has not chosen to tax the same calling for the support of the State government. *Ibid.*

5. The proceeding by rule under the 71st section of the Revenue Act, against a Tax Collector and his sureties, is a summary one, to be tried without the intervention of a jury. *State* v. *McDonnell*, 231.

6. The time being fixed for answering the rule if the party called upon to show cause neglects to answer, no judgment by default is necessary, but the rule may on proof be at once made absolute. *Ibid.*

7. The State Tax Collector has a right to institute an action in the name of the State, for the recovery of taxes, when it is evident that the seizure of property would occasion an injunction.
State v. *Southern Steamship Company*, 497.

8. The interest of a company in steamships is an object of taxation, covered by the fifth clause of the first section of the Act of 1855. *Ibid.*

TAXES, TAXATION, TAX COLLECTOR, &c., (*Continued*).

9. Where an incorporated company has property subject to taxation in the district of its domicil, they are bound to apply to have the tax roll corrected if they are erroneously assessed. *Ibid.*

10. The mill tax under the Act of the Legislature of 1855, is levied to provide means for the education of the white youth of the State; it was approved the same day as the Act to provide a revenue, and being for different objects, both Acts must have effect, as they are not utterly repugnant to each other. *Ibid.*

11. After the delay has expired for citing delinquent tax payers under the Act of the Legislature of March 20th, 1855, providing the mode of collecting city taxes, the proceedings are to be conducted by the City Attorney by virtue of the thirty-fifth section of that Act. *New Orleans* v. *Jeter*, 509.

12. The Act of the Legislature of 1855, which provides that a commission of five per cent. should be added to each tax bill for the fees of the City Attorney, was repealed by the Act of 1856. *Ibid.*

See POLICE JURY—*Benefield* v. *Hines*, 420.
See WARRANTY—*Hale* v. *New Orleans*, 499.
See SUCCESSION—*Succession of Paryoud*, 367.

TOLL.

See ACTS OF CONGRESS—*Boykin* v. *Shaffer*, 129.

TUTORS AND TUTORSHIP.

1. The judge alone, or other authority exercising his functions, at the domicil of the minor, has the right to make the appointment of tutor or guardian. *Succession of Shaw*, 265.

2. And it is the tutor or guardian of the domicil alone who can, in virtue of the personal statute, under which he is appointed, act as such in other countries. *Ibid.*

3. The decree of homologation of the proceedings of a family meeting authorising the tutor of a minor to borrow money, is a sufficient protection to the lender of the money, who is not bound to see to the judicious application of the money. *Succession of Hickman*, 364.

4. A tutor is only bound to render an account of his tutorship, when it expires by his ward attaining the age of majority, or when ordered to do so by the Judge. *Succession of Tucker*, 464.

5. A tutor may file annual, or provisional accounts, for the purpose of preserving evidence of payments made by him, or when necessary to the obtaining of certain orders of court pending his administration; but all these accounts of tutorship thus sanctioned by law, although they are *prime facie* evidence, they are not conclusive upon the minor, unless rendered to him after his majority or emancipation. *Ibid.*

6. An approval of the final account of the tutor, and an agreement, that as approved it should be homologated, made by the ward, after attaining the age of majority, or being emancipated, is equivalent to a waiver of citation, and a consent judgment. *Kellar* v. *O'Neal*, 472.

7. A judgment homologating an account under such circumstances, cannot be treated by the ward as a mere nullity, by filing an opposition to the account homologated by his consent. *Ibid.*

TUTORS AND TUTORSHIP (*Continued*).

8. A direct action under proper averments of fraud, or mistake, must be brought to annul such a judgment. *Ibid.*

9. Where the ward has given his tutor a receipt for the balance shown to be due him, by the final account, which he had previously approved, it would seem, under the authority of *Haydel* v. *Roussel*, 1 An. 38, that he would be bound to bring a direct action against his former tutor, to annul his receipt, before he is allowed to file an ordinary opposition to such final account. *Ibid.*

10. The natural tutrix cannot be compelled to pay the price of the property purchased, at the sale of the succession of her husband, unless it is shown that the succession is insolvent, or that the amount due by her is necessary to pay the debts of the estate. *Hollier* v. *Gonor*, 591.

See PARTITION—*Succession of Aguillard*, 97.
See MINORS—*Chapman* v. *Chapman*, 228.
Massey v. *Steeg*, 350.
See JUDGMENT—*Tutorship of Hughes*, 380.

USUFRUCT.

See SUCCESSION—*Conner* v. *Conner*, 157.
See WILLS—*New Orleans* v. *Baltimore*, 162.
Clarkson v. *Clarkson*, 422.
See HOMESTEAD ACT—*Succession of Yarborough*, 378.

USURY.

1. Where the defence to an action for a balance of account was, that there were usurious charges in previous accounts which resulted in the balance sued for—*Held:* That if such previous accounts were tainted with fraud or usury, their reception without objection by the party to whom they were rendered, would not be a valid objection to the defence, if it was set up within the time limited to recover back usurious interest.
Wright v. *Hill*, 233.

2. Where the use of slaves was given in lieu of interest for money loaned, and there was a great disproportion between the value of the services of the slaves, and the rate of conventional interest—*Held:* That it will be presumed that the contract was intended to secure usurious interest.
Succession of Hickman, 364.

VENUE.

1. The statute relative to a change of venue in civil cases (Acts of 1855, p. 303) does not make such change a matter of right, but leaves it discretionary with the court, to grant or refuse the application after hearing evidence. *Fletcher* v. *Henley*, 191.

WARRANTY.

1. Where a sale was made of so many barrels of potatoes and onions, at a certain price, to be delivered from a vessel then in transit from New York to New Orleans, without any guaranty at all, except as to the number of barrels—*Held:* That the exclusion of warranty did not empower the vendor to deliver barrels partly empty, or containing decayed matter.
Lanata v. *O'Brien*, 229.

WARRANTY (*Continued*).

2. By the exclusion of warranty it was not intended to free the vendor from the obligation of delivering merchandise of the species sold, though he was not bound to deliver it of the best quality or in the best condition. *Ibid.*

3. The neglect of the vendee to have the act of sale recorded, whereby a creditor of the vendor is enabled to attach the property and have it sold for his debt, does not release the vendor from his obligation of warranty. *Clark* v. *O'Neal*, 381.

4. The final decision of the land department upon questions of title previous to the issuance of patents or divestiture of title, is of itself so far equivalent to an actual eviction, as to sustain the action of warranty, unless the defendant in warranty shall perfect the title. *Butler* v. *Watts*, 390.

5. The decision of the General Land Office being subject to an appeal to the Secretary of the Interior, is not technically *res judicata;* yet an exception to an action in warranty, upon the ground that such an appeal does lie, does not go to the dismissal of the action. Defendant could only claim a continuance (after having taken such appeal) until the same should be decided. *Ibid.*

6. A judgment against a warrantor will not be amended by the Supreme Court, where the warrantor has not been made a party to the appeal bond. *Long* v. *Barnes*, 392.

7. A party must show an actual eviction, in order to recover in an action of warranty. *Hale* v. *New Orleans*, 499.

8. The return to a writ of possession in a suit to which the warrantor was not a party, is not conclusive evidence of eviction. *Ibid.*

9. Where contiguous lots of ground were sold separately at public auction, and adjudicated to the same purchaser—*Held:* That it was a sale of a number of independent things, giving a right of warranty as to each, and that the purchaser would have no action of rescission except for such lots as were deprived of their proportions by eviction from part of them. *Ibid.*

10. The purchaser who went into possession of the property sold, is only entitled to recover from his warrantor interest on the price paid, from the date of the eviction. *Ibid.*

11. The warrantor is not liable for the taxes paid on the property by his vendees. *Ibid.*

12. The fourth paragraph of Art. 2482 of the Civil Code does not include counsel fees for bringing the action against the warrantor. *Ibid.*

13. In an action of warranty the vendor will not be held liable for improvements made by the vendee on the land, after the commencement of a suit to evict him, when it is not shown that the improvements increased the value of the land, or benefited the warrantor. *Coleman* v. *Ballard*, 512.

See PRACTICE—*Hyman* v. *Bailey*, 450.

WIDOW, HOMESTEAD PRIVILEGE OF.

See HOMESTEAD ACT.

See SUCCESSION—*Succession of Hunter*, 257.

WATER COURSE.

See Acts of Congress—*Boykin* v. *Schaffer*, 129.

WILLS.

1. The following document, written, signed and dated in the hand of *John McDonogh*, held to be valid as his olographic will or as a codicil thereto:

"$100,000. New Orleans, January 25th, 1848.

Four years from and after my death, I hereby authorize and direct (and will) my executors to pay unto *Francis Pena* one hundred thousand dollars. John McDonogh."

Pena v. *New Orleans and Baltimore*, 86.

2. But this legacy not being within the terms of Article 1624 of the Civil Code, does not bear interest before the suit brought for the same. *Ibid.*

3. Conceding the suspicion which may attach to the appearance of a small scrap of paper as the title to a large fortune, and the delay in the person who sets it up four years after the testator's death as a codicil to his will, yet these suspicions should not counterbalance the testimony of numerous and uncontradicted witnesses, who sustain the genuineness of the document. *Ibid.*

4. It is a sufficient ground for the institution of a suit in a State Court to avoid a will and the probate of the same on proper allegations, that, under the established and settled jurisprudence of the Supreme Court of the United States, the United States Courts will not entertain enquiry into the validity of the will after the probate thereof in a State Court, and that the party causing the will to be probated, is fraudulently endeavoring to evade the examination of all questions touching the validity, and existence of the will, by suits instituted in the Circuit Court of the United States. *Clark* v. *Gaines*, 138.

5. In all cases, an action to set aside a will which had been probated, involves the reversal of the decree of probate, the probate being merely ancillary to the will. *Ibid.*

6. The clause in the will of the late *John McDonogh*, prohibiting the division of the estate between the cities of New Orleans and Baltimore, held to be a condition contrary to law and to be reputed as not written. *New Orleans* v. *Baltimore*, 162.

7. A testator can order that the effects given or bequeathed by him shall not be divided for a certain time, which cannot exceed five years. C. C. 1223. *Ibid.*

8. The personal charge by the will on the cities to pay over to the American Colonization Society and the Society for the Relief of Destituue Orphan Boys, a certain proportion of the revenues of the property bequeathed, did not create a mortgage or real right in favor of the societies on the property. *Ibid.*

9. The bequests in favor of the societies are *quasi* usufructs, and as such, they can only last thirty years. C. C. 607. *Ibid.*

10. The will of *W. M.* contained the following clause: "*I wish my wife Jeannette Matthews to have her lawful part of my estate, and her choice of the house servants after my decease, as prescribed by the laws of this State.*"

WILLS (*Continued*).

Held: That the clause, "her lawful part of my estate," applied by the testator to his wife, meant the one-half of the acquets and gains in full ownership, and the usufruct of the other half.

Matthews v. *Matthews*, 197.

11. *Held*, also: That the clause by which the testator bequeathed to his wife her choice of the house servants after the testator's decease, was a bequest of as many as she should choose to select of the slaves employed about the house at the time of the testator's death, and that the widow having selected four, from out of the eight or nine in number, was entitled to them.

Ibid.

12. The testator gave to his wife the "absolute control over the increase" of his estate, with power to dispose of it as she pleased, until his (the testator's) son arrived at the age of majority—*Held:* That the word "increase" was sufficiently comprehensive to embrace the revenues, and income of the property, and that the intention of the testator was to give to his wife the usufruct for the period mentioned. *Succession of Swayze*, 244.

13. A testator is not allowed by law to bequeath to a stranger a usufruct for life of his whole estate when he has forced heirs. "No charges or conditions can be imposed by the testator on the legitimate portion of forced heirs." C. C. 1703. "If the disposition made by donation *inter vivos* or *mortis causa* be of an usufruct, or of an annuity, the value of which exceeds the disposable portion, the forced heirs have the option, either to execute the disposition, or to abandon to the donee the ownership of such portion of the estate as the donor had a right to dispose of." C. C. 1486.

Clarkson v. *Clarkson*, 422.

14. Where a will was probated before the Clerk of the District Court, and an order granted that it be executed, recorded and deposited in the Clerk's office—*Held:* That such a decree is not conclusive upon the heirs not cited, and that when set up as a muniment of title against their claims to property belonging to their inheritance, the validity of the will thus probated may be called in question by them collaterally.

Provost v. *Provost*, 574.

15. Where the following disposition was contained in a will, viz: "*I give and bequeath to my beloved wife, the plantation upon which I reside, and the following slaves, &c., &c. I further will, that upon the demise of my said wife, that the property bequeathed her return to my brothers and sisters and be equally divided between them.*" *Held:* That such a disposition is a prohibited substitution—null even as to the legatee—and that the prohibition contained in Article 1507 of the C. C., being in the interest of public order, the bequest clashing with it is an absolute nullity, incurable by the prescription of five years. *Ibid.*

See EXECUTORS—*Succession of Fink*, 103.
See LEGACY—*Groves* v. *Null*, 117.
See JURISDICTION—*De la Droix* v. *Gaines*, 177.
See EXECUTORS—*Close* v. *Close*, 590.

WITNESS.

1. Although it is not a good objection to the competency of a witness, that he is a creditor of the party for whom he is called to testify, yet the fact may be shown as affecting his credibility. *McClure* v. *King*, 141.

WITNESS (*Continued*).

2. Where it does not appear that a party was aware at the time of crossing his adversary's interrogatories, that the witness had an interest in the event of the suit, the objection may be made, although not reserved *Ibid.*

3. The defendants were sued as the partners of a third person to render them liable for the drafts of the latter, as advances to a firm of which they are alleged to be members—*Held:* That one was not a competent witness for the other, to prove that he was not a member of the firm.
Bailey v. *Doak*, 272.

4. The broker or agent of both parties who is a party to the record, but without interest in the suit, is a competent witness.
Rutherford v. *Hennen*, 336.

5. The general rule, that a party to the record is not a competent witness, must be observed, unless a necessity is shown in a particular case for a departure from it. *Beer* v. *Word*, 467.

6. The vendor of a steamboat is not a competent witness for his vendee, in a suit in which the title to the boat is involved. *Bennett* v. *Quirk*, 547.

7. A defendant who has allowed a judgment by default to be made final against him, is incompetent to testify upon the trial of the case as to his co-defendant, who has answered, he being interested in the question of costs.
Bank of Louisiana v. *Hudson*, 600.